#### ORIGINAL TRANSCRIPT

# DIVISION OF OIL, GAS & MINING STATE OF UTAH

#### INFORMAL CONFERENCE

TAKEN AT:

Department of Natural Resources

1594 West North Temple

Conference Room A

Salt Lake City, UT 84114

DATE:

January 28, 2003

TIME:

10:25 a.m.

REPORTED BY:

Kerry J. Sorensen, RPR





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1	APPEARANCES
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3	DIVISION OF OIL, GAS AND MINING:
4	Lowell P. Braxton, Conference Chairman
5	Mary Ann Wright
6	D. Wayne Hedberg
7	Lynn Kunzler
8	
9	ASSISTANT ATTORNEY GENERAL:
10	Steven F. Alder, Esq.
11	
12	ALSO PRESENT:
13	Dan Powell
14	Susan White
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#### Informal Conference

2 January 28, 2003

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PROCEEDINGS

THE CONFERENCE OFFICER: Well, let's go ahead and get started, then. This is the informal conference that was requested for the Cherry Hill Park Mine. We refer to that as M/049/021. We're conducting this under the authority of Title 40-8, Utah Code.

A "conference" is defined in--in the Utah code as an "informal adjudicating proceeding," and that's defined at 40-8-4. I'm going to read kind of an abbreviated definition of an "adjudicative proceeding," just to kind of set the tone for what we're doing right here. term is a Division -- and that's Division of Oil, Gas & Mining or Board of Oil, Gas, & Mining-action or proceeding that determines the legal rights, duties or other legal interests of one or more identifiable persons, including actions to grant deny, revoke, suspend or amend an authority, license, or permit. So that's--that's not a literal definition, but that's the essence of the definition of the statute.

So we're looking, then, at a permitting



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action that's -- that's taken place, and there's been some concerns raised by the Division as to the timeliness of that action. And we apparently gave you, Dan, some options as to what you might do, and you requested this informal conference, so that's what we're doing right now.

One thing that I'll add before I turn this over to the Division, is that we have procedures for dealing with evasion of the chapter, which may be what we're dealing with right now. Those are enumerated in Chapter 40-8, specifically 40-8-9, and those procedures include levelling civil penalties, cessation orders, and-and other options that are available to the Division. So I--as--as we talk about where we're going today, I think we need to recognize that -that at least from my--my understanding of what's happening, this has been a clearly protracted permitting action, and we haven't done this -- this informal conference at the spur of the moment. think there's a history here that--that I'd like the Division to develop, and then if there's something, Dan, that you can do that's--that's going to facilitate compliance with the -- with the act and the regulations, that's what we'd like to



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So with that, I'll turn it over to--to Wayne Hedberg.

This morning, as MR. HEDBERG: Okay. Lowell indicated, the purpose of this informal conference is--is to provide the operator with an opportunity to come in and discuss the status of--of where he is at in terms of responding to the Division's requests for information and--and the resolution of the outstanding permitting requirements. What I'd like to do this morning is have one of my staff members, Lynn Kunzler, read into the record at least some of the key permitting history and chronology that has--will kind of set the stage for where we began with the permitting process and the steps that we've gone through to get us to where we are today.

And I've provided you with a copy, Dan, of the chronology there, so you can follow along with that.

With that, I guess I'd like to turn-MR. KUNZLER: Okay. Summarizing
chronology, and there's a few entries on the
chronology I won't be discussing, history of the
Cherry Hill Park Mine began, as far as the



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Division is concerned, on July 8th of 1992, when we received the small mining notice of intention to conduct operations at the Cherry Hill project.

The next year, in July 22 of '93, we inspected the site and found that the site was in compliance with just slightly less than five acres of disturbance.

By July of--27th, 1994, another inspection occurred. We found and estimated the acreage to have exceeded the five acres, with an approximate seven acres of disturbance, and we were provided information at that time that the operator had posted a reclamation surety with Utah County to cover nine acres of disturbance.

In August the 24th of '94 we sent a letter to the operator requesting that a large mine notice be filed with the Division within 45 days.

In October he'd requested an extension for 30 days. The Division granted that extension, and on November 14th of 1994 we received the original large mining operation notice of intention.

In June 2nd of 1995 the Division sent a deficiency review of that notice requesting a--a



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response on that.

October 27th of '97 we sent another request asking the operator to respond to that review, which was at that time over two years old.

December 4th of '97 the operator again requested a 90-day extension to submit that. This was subsequently denied by the Division. We felt that it already had been over two years and another 90 days wouldn't do anything, and we established a February 27th, 1998 deadline to have the--the response in.

On February 27th we received a--a fax from the operator which stated that he would reclaim a portion of the operation to get back under five acres, rather than submitting the--or proceeding with permitting as a large mining operation. His annual reports for that year indicated that there was about 13 acres of disturbance.

In December of '98 the Division sent a letter again requesting a formal submission of all the permitting materials to date. The Division had never received a certified copy of the map or letter stating that sufficient acreage had not



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been reclaimed to--to have him as a small miningoperation.

So in March 3rd of 1999 we received a revised large mining operation notice.

In September 22nd of '99 we did a survey of the site during an inspection, using a GPS global positioning satellite system. We calculated that there was approximately 20.6 acres of disturbance on the ground. 19.7 acres of that would require reclamation. There was a small area of approximately nine-tenths of an acre that would remain unreclaimed at the request of the landowner. Also, at that time there was about 4.3 acres that had been regraded.

September 30th of 1999 the Division completed a second deficiency review of the March 3rd '99 submittal.

In January 23rd of 2001 we again sent a certified letter requesting a response to our reviews, and established a 30-day time to do that.

May 7th of 2001 the operator came into our office and claimed that the letter that we had sent had been delivered to the wrong address. We gave him another copy of the--the response in the letter at that time and gave him until the



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end of June 2001 to respond.

On June 29th of 2001 we received a letter from the operator requesting a meeting to discuss the review to make a time frame to make the submissions.

July 30th of 2001 we had a meeting to discuss the review. The operator was again granted 45 days to submit the information.

On September 17th of 2001 we received a phone call requesting another two-week extension. This was granted 'til October 1 of 2001.

January 22nd of 2002 we sent a certified Division directive. It had been over 100 days since we had extended the--past the extended deadline of October 1st of 2001, and he was asked to contact the associate director to schedule a meeting to remedy the situation.

On January 31st we received a phone call with regards to that certified letter. He indicated that he hadn't received it, we'd sent it to a Price address, and he says, "I live in Utah County. I only get to Price every few weeks to pick up the mail." We faxed him another copy of that letter.

On February 11th the operator called



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and scheduled a--the meeting with the associate director for February 25th of--of 2002.

On February 19th we received another phone call requesting that we reschedule the meeting to early March, and that was subsequently scheduled for March 12th.

On March 12th of 2002 we met with Mr.

Powell, the associate director in mineral staff.

We went over the operator's responses to

outstanding technical deficiencies, and Mr. Powell

agreed to provide a formal response to the

Division by March 22nd.

April 3rd of 2002 the Division called Mr. Powell, requesting the status of this technical response. It was now, again, overdue. He--the--at the time Mr. Powell indicated that he was having difficulty requiring the information needed, and with his taxes due he needed a couple more weeks so he could also comply with tax laws.

On May 14th of 2002 the Division issued a notice of noncompliance and Division directive. We faxed, as well as certified mail, this to the operator, ordering suspension of operations, posting of the reclamation surety, and submitting the reclaiming deficiencies. And a 30-day



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deadline was established, drawn, the receipt of the letter to post the surety.

On June 11th we received the response to the September 30th, 1999 review letter.

June 26th we had a site inspection.

The site was inactive, but the operator did not show up for that scheduled inspection to discuss some of the concerns that were there on-site.

Between July and December we'd had several phone calls and personal contacts with the operator to discuss where the reclamation surety was. He indicated he was having troubles in obtaining that surety. He indicated he'd been talking with several surety companies, banks, etc., and it seemed like every time we talked to him he says, "Well, I think I've got it lined up. I'll have it to you within a week to ten days." To date we still have not received that reclamation surety.

On January 9th we sent a proposed agency action letter to Mr. Powell. This was hand delivered by the Utah County Sheriff's Office on January 14th. This letter outlined the procedures--or, the action the Division was--was taking in--to address the noncompliance, and gave



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1 Mr. Powell the option of appealing either to the 2 Board or to the Division director.

And that brings us to today where we're now in that hearing, or conference.

MR. HEDBERG: I think having read this chronology into the record, as Lynn indicated this kind of brings us up to where we are today. And I guess my position from this point would to give Mr. Powell an opportunity to rebut any of the statements or records that we have indicated here, if he feels that they are in error or that there's some corrections that need to be made. We're here to—to listen to those, and, as well, any other updated information you may have in terms of acquiring surety and completing this permitting process.

MR. POWELL: Okay. Well, thanks for giving me the opportunity to come in here and address this issue today. I didn't come prepared to rebut any allegations with regard to supposed evasive action on—on any regulations set up by the state to DOGM. I don't know where you're headed with that, but don't get yourself in trouble, that's all I can say.

I--I've never intended to do such. I--



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I am a one-man team. I don't have a--a full staff of people walking around with their hands in their pockets, you know, from time to time, dreaming up how they can take rights from someone, okay? I'm--I'm just a one-man team and I've done the best I--I can.

But I want to go over your little chronology here. What I want to start with is what--we want to focus on--on November 14th, 1994, when I--when we--the Division received the original large mine application, okay? If I have to hire an attorney, that's what I'm going to focus on. I'm going to focus on November the 14th, 1994, when that was submitted and all of these supposed--and I'm going to use your language -- "outstanding technical deficiencies," I think you because I don't think there was any. went over the same issues time and time again-time and time again. And if I hire an attorney, this will come out, okay, if I have to, but I doubt I'll need one.

From November the 14th, when we--when we filed this, I note that it took the Division-- and I don't have the convenience or the luxury of having the--the state statutes before me, but I--I



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do know enough about the state statutes to know that -- that the state's not permitted six or eight months to come back with a response to a large mine application, and--and--and then, when they do come back with a response, put in it "outstanding technical deficiencies," that took me more than eight years to not only understand, but I'll bet you that the -- the -- my response when -- when you stamped your satisfaction on it, it wasn't much different than when it was received November the 14th. And if you want to push the issue, we'll And so I'm putting a lot of weight find out. on--on what you refer to as "outstanding technical deficiencies, " because I don't think there was I don't think there was any. I don't think there was any when--when I filed that on the 14th of November 1994, and I don't think there's any And I think they were the same.

"order suspension of operation," there was no order of suspension of operation, because I'd already--I only operate when I have a market.

There wasn't anything that--to--to suspend from.

So, you know, you can--you can break the suspense and the drama. There wasn't any order to--to--to



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suspend, it was already suspended. If you had gone down and done the inspections, like I'm paying you to do, you would already know that.

Let's see here. Oh, with--with--with regards to the May 7th, 2001, "Operator came into the office...," you know, I love how you put your letters together to make it look on--so bad on the claimant. You know what? When I do hire an attorney, he's going to love this, how--how you change things around, distort things, twist things to make--to make it look like I'm doing just that you've claimed here, that's erroneous, okay?

"Operator came into the office, claimed a letter was sent to the wrong address to Steven Powell." Well, hell no, that couldn't be further from the truth. How that came up is I came in to Joell because you guys was calling me up saying I was supposed to receive a letter, and I did not—I did not—and I'm putting an asterisk by that—I did not find that out until Joell told me. She told me, I didn't tell her. So, you know, with—with all your effectiveness here in the—the DOGM offices, you ought to send it to the right address, okay?

And--and that was--that was--and it was



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more than--than what--it was--it goes beyond what 2 someone claimed, it's a fact. DOGM sent it to 3 the wrong address. MR. HEDBERG: That was the address you 5 gave us. 6 MR. POWELL: Yeah. I'm not running--7 I'm not doing your work for you, partner. 8 THE CONFERENCE OFFICER: Did vou 9 provide that address that we sent it to? 10 MR. POWELL: Did I provide it? 11 THE CONFERENCE OFFICER: Yes. 12 MR. POWELL: I don't know where you got 13 it. You answer that yourself. 14 THE CONFERENCE OFFICER: Well, I'm just 15 asking a question --16 MR. KUNZLER: It was an address you had 17 provided to us. 18 MR. POWELL: You're full of crap, 19 Kunzler. That was -- I don't know where you got it. 20 THE CONFERENCE OFFICER: Okay. 21 let's--let's keep going. 22 MR. POWELL: Hey--hey, let me tell you 23 something. That party that you sent that to is 24 my competition, and if he -- if they use that 25 information that you sent them, you are going to



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get sued, and remember that. That's a competing corporation. That information you sent them is classified, and I asked that it be classified, confidential. So when you're--when you're doing your little paperwork, remember that. You came up with that address. That's my competition's. Why would I give you my competition's address, okay?

So I'll get down to the nuts and bolts here. As far as the letter that you sent, it

here. As far as the letter that you sent, it looks like that we're--you know, with all of this bull crap about stalling and--and holding things back, we're down to one issue, okay, and that's--that's Item Number 3, the bond. So what I'm going to do is I'm going to go over a history of--of my attempts to satisfy that, okay?

Back in the--in July--or--or June, after I submitted that information that satisfied the Items 1 and 2, I started working immediately on that, okay? And if you want to--if you want to make a copy of this card and call those people, you can do that. I made application at Wiseman Insurance Agency, 289 East Center; Provo, Utah, okay, and I went to a gentleman by the name of Rob. I filed an application.

THE CONFERENCE OFFICER: Excuse me.



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When--when did you do that? 2 MR. POWELL: Immediately after--3 immediately at the time that I was filing the information in June. So it was June -- June or 5 July. THE CONFERENCE OFFICER: Of what vear? 7 MR. POWELL: In fact, I've got--8 THE CONFERENCE OFFICER: Excuse me, 9 What year did you do that? please. 10 MR. POWELL: 2002. 11 THE CONFERENCE OFFICER: Okay. Thanks. 12 MR. POWELL: I've got your late--late 13 June, early July I made application with Wiseman. 14 It was--it's actually a process. There's--there 15 were several documents that I had to -- to file with 16 them, okay? And I didn't hear back from Weisman. 17 I--I--I filed my documents with Weisman, I never 18 heard back from them. And then in the fall--19 sometime in the fall, when I contacted them back, 20 they said that their underwriter had--had quit 21 doing that, okay? They had quit doing the 22 reclamation bonds, reclamation surety, okay? 23 So if you want to call them and ask 24 them why their underwriter doesn't do that 25 anymore, that's up to you. All I know is I was



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1 denied, okay? And I -- and I made applications with 2 them. I later went to Key Bank and made 3 application for a letter of credit, and I dealt 4 with a loan processor. His name was Adam 5 Christensen, and--and Nathan Walker. He's with--6 7 he's a relationship manager for Key Bank. 8 their office was on Orem Parkway Key Center in 9 Orem. And, according to them--I sat down with 10 them after they reviewed my application and stuff. 11 And they was two parts to the letter of credit, 12 for the amount of 43,500, and I have the 13 application right here, okay? THE CONFERENCE OFFICER: 14 What's the date of the application? 15 MR. POWELL: The date of the 16 17 application is -- I don't see a date on it, okay? Anyway, when I sat down with them they 18 19 said there was two parts of it. There was corporate assets for--for security, collateral 20 21 security, and then the other part to it was, you 22 know, how much business are we currently doing? 23 Well, the--the core is not operating, we don't 24 have a cash flow, and that was our downfall.



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said without a cash flow he couldn't give me the

letter of credit, okay? And so we--we--Emery
Industrial Resources was denied that letter of
credit.

After that I went back to Wiseman's, trying to make some headway there and find out some facts, and, you know, all Wiseman told me is they gave me another bonding agency. They gave me the name of Cindy Parmley with CornerStone Insurance in Orem. And so I went--I've gone to--to CornerStone and I've made applications, and I've brought back the letter here. And I--if you want to make a copy of this and keep it for your records, you can, but I--and you can keep the original, if you want to, but I need a copy for my file.

THE CONFERENCE OFFICER: Okay. Thank you.

MR. POWELL: And so, you know, it's still—it's still in process and there's—there's no evasiveness involved in it. And if you want—if you want to push that issue, I'll be glad to entertain it.

THE CONFERENCE OFFICER: That's your statement?

MR. POWELL: That's my statement.



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1	THE CONFERENCE OFFICER: Tell me, why
2	has it taken so long to get to where we are?
3	MR. POWELL: You ask yourself. You ask
4	yourself that.
5	THE CONFERENCE OFFICER: No, I'm asking
6	you. I'm asking you specifically.
7	MR. POWELL: Well, II think that
8	there'sII'd say that there's two reasons. I'd
9	say, number one, I'dI'd say the state's drug
10	their feet, and, number two, Ime being alone
11	andand having to do all of these requirements
12	myself, I think it's taken more time.
13	THE CONFERENCE OFFICER: Andand do
14	you understand thatthat under the law you
15	shouldn't have created any of this disturbance
16	without a permit and an adequate bond? Dodo
17	you understand that part of the law?
18	MR. POWELL: Well, II feel we've
19	lived up to the law.
20	THE CONFERENCE OFFICER: So do you
21	agree on the amounts of disturbance that are shown
22	in thein the chronology that we presented you
23	with?
24	MR. POWELL: I don't. I don't agree
25	with the amount thatthe land and I don't agree



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with the -- the amounts that the state has set for 2 the reclamation. And I've--I've expressed that 3 to--to Lynn on several occasions, and I know that he doesn't have that in his notes. 4 5 THE CONFERENCE OFFICER: Do you--MR. POWELL: Make that part of the 6 7 record. 8 THE CONFERENCE OFFICER: Well, it is. 9 It's--10 MR. POWELL: Yeah. 11 THE CONFERENCE OFFICER: It's being--12 it's what we're creating. MR. POWELL: Yeah. Make that part of 13 14 the record. 15 THE CONFERENCE OFFICER: Do--do you 16 understand that --17 MR. POWELL: Your 43.5, I could get 18 someone to go down there and do the reclamation 19 that's two state spec.'s for about a third of 20 that. 21 THE CONFERENCE OFFICER: Do you agree 22 with the surface disturbance that we're talking 23 about in--in terms of the number of acres? 24 MR. POWELL: I don't. I've already--25 I've already said that.



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THE CONFERENCE OFFICER: 1 Okav. But--2 but do you understand that it's -- you're the one that's supposed to provide the maps when--when you 3 4 do a permit application? MR. POWELL: I--I don't understand 5 I have supplied the maps. 6 that. 7 THE HEARING OFFICER: So there's a 8 substantial difference between you and the Division in terms of the -- the reclamation 9 10 disturbance--11 MR. POWELL: You'd better answer that 12 vourself. 13 THE CONFERENCE OFFICER: Well, I'm 14 asking you. 15 MR. POWELL: Yeah. THE CONFERENCE OFFICER: 16 That's what 17 vou're here for. I--I--I go by my maps, 18 MR. POWELL: 19 okay? I go by the maps I furnished. THE CONFERENCE OFFICER: And are those 20 21 maps certified or -- or done by a certified surveyor 22 or anything like that? 23 They started out that way. MR. POWELL: THE CONFERENCE OFFICER: Has the--has 24 25 the amount of disturbance increased from the time



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1 that you've been working with us to acquire a In other words, can we--can we agree 2 permit? 3 that this started off as a small mining operation with less than five acres' disturbance? 4 5 MR. POWELL: I would say that -- I'd say 6 yes to that, but I'd say that there was quite a bit of disturbance when we started, and I think that should be taken into account. 8 9 THE CONFERENCE OFFICER: So it was 10 disturbance that was created by a different 11 operator? 12 MR. POWELL: That's right. It was--it 13 was -- it was disturbed by Loudermouth Construction 14 back in the late '70s. In fact, let me--if 15 you've got--let me--can I see your map there? 16 Okay. But let me ask a few questions, if 17 I might. Who put this together? Who put this 18 map together? 19 MR. KUNZLER: T did. 20 Okay. What did you create MR. POWELL: 21 it from, Lynn? 22 MR. KUNZLER: I created that map from 23 the GPS data that I collected and overlaid it on 24 top of the USGS topographical map. 25 Okay. MR. POWELL: On a--on a--on a



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1	United States topographical map. What is this
2	little squareor that little emblem there, that
3	little icon? What is that?
4	MR. KUNZLER: Itit indicates that
5	there wasas of that map, that there was some
6	type of mining related disturbance. They'd called
7	it a gravel pit.
8	MR. POWELL: So do you know the date
9	that was on that map?
10	MR. KUNZLER: I do not
11	MR. POWELL: Okay.
12	MR. KUNZLER:at this time. I'd have
13	to go look and see what the
14	MR. POWELL: Well, just tell me what
15	you think. Whatwhat would you say? When do
16	you think that map was made? Do you think it was
17	prior to the time that we started there?
18	MR. KUNZLER: IIas far as the map I
19	used, no. It's probably been updated within the
20	last ten years.
21	MR. POWELL: So when did we start?
22	MR. KUNZLER: You started a small mine
23	11 years ago.
24	I don't know the date of the map. It
25	wasit's a computer generated map, and they



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1 MR. POWELL: Well, if--2 MR. KUNZLER: --try to keep them 3 updated with--MR. POWELL: Is there a chance--is 5 there any chance--There--there is. And I'm 6 MR. KUNZLER: 7 not--we're not arguing that there was something 8 there before you moved in. 9 MR. POWELL: Okay. That's the point 10 I'm trying to make. Thank you. 11 MR. KUNZLER: And we've never argued 12 that. 13 MR. POWELL: Okay. 14 MR. KUNZLER: And, in fact, the portion 15 on that map that shows--that's identified as not 16 needing--needing reclamation is old disturbance 17 that was done prior to you being there, that you 18 are not reimpacting, reusing, necessarily. 19 Well, that's the MR. POWELL: Yeah. 20 That's -- that's the remnants of what you remnants. 21 can--that you--that you--22 MR. KUNZLER: But--but--but the law 23 says that if you reuse areas that were previously 24 disturbed you do have a responsibility for 25 reclamation of those areas.



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MR. POWELL: Okay.

THE CONFERENCE OFFICER: Let's--let's look at page 2 on the chronology, Mr. Powell, if you wouldn't mind. And--and--and I'm seeing two--two acres--two acreage amounts. Look at the September 22nd, 1999. We're GPSing and seeing 19 or 20 acres, and you're submitting an annual report a few months after that, January 29th, 2001 that identifies eight acres of disturbance.

MR. POWELL: Uh-huh.

THE CONFERENCE OFFICER: What--what do the permits--

MR. POWELL: I don't--I don't think
we've ever--I don't think we--in any of our annual
reports I don't think you can find one where we
exceeded 13 acres. And that was by our own
estimates. And out of the 13 we reclaimed five,
what we feel is five acres. So that's why it went
back down to eight.

THE CONFERENCE OFFICER: Okay. Is there anything that—that we can agree on in terms of your willingness to—to comply with posting a bond and/or reclaiming the disturbances that you've created, or are we at loggerheads right now in terms of—of where we're going, because I don't



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want to protract this--conference if--if that's 2 the case. 3 MR. POWELL: Did you see that document 4 that I just handed to you? 5 THE CONFERENCE OFFICER: I can see it in front of me right now. 6 MR. POWELL: Maybe you ought to read it. And--and those words that you're using is 8 9 twisting and distorting the record, and I want it 10 corrected, and let's quit playing games. 11 THE CONFERENCE OFFICER: Well, then I 12 think if--do you have anything else you want to 13 say? 14 MR. POWELL: That's it. 15 THE CONFERENCE OFFICER: Do you have 16 any--17 MR. POWELL: I'll let that document 18 speak for itself. 19 THE CONFERENCE OFFICER: Then I think 20 we'll conclude by saying that we have unreclaimed 21 disturbance and unbonded disturbance right here. 22 I'm going to--to review this letter that you 23 suggested that we do, and I'm going to make a 24 finding on this, and I'll have those findings to 25 you within 30 days.



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1	MR. POWELL: Great. I'll be waiting
2	for it. In the meantime, I'll be working on my
3	bond.
4	THE CONFERENCE OFFICER: And do we have
5	a correct address for you?
6	MR. POWELL: What address have you been
7	sending it to?
8	THE CONFERENCE OFFICER: I'm asking
9	you. Youyou asserted that we didn't have an
10	adequate address. Is the address that we have on
11	the record right now your current address, your
12	current business address?
13	MR. POWELL: And whatwhat address is
14	that, sir?
15	THE CONFERENCE OFFICER: Please read
16	that, Wayne.
17	MR. HEDBERG: We have athe last
18	letter that was sent, and I believe it was sent
19	to his home address, which is 62 South 800 West;
20	Payson, Utah 84651.
21	MR. POWELL: Thatthatthat's great.
22	THE CONFERENCE OFFICER: That's where
23	we should be sending business records?
24	MR. POWELL: Either that one or the
25	P.O. Box 489; Price, Utah 84501. Either one of



```
1
      those will get to me.
                              But sending it to my
 2
      competition is not only against the law, that's
 3
      the wrong address, and nobody--nobody that deals
 4
      with Emery Industrial Resources ever authorized
 5
      that, ever.
 6
                 Thank you.
 7
                 THE CONFERENCE OFFICER:
                                            Thank you for
 8
      coming in.
 9
                 That will conclude this informal
10
      conference.
11
        (The conference was concluded at 11:10 a.m.)
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#### CERTIFICATE

This is to certify that the foregoing deposition was taken before me, KERRY SORENSEN, a Registered

Professional Reporter and Notary Public in and for the State of Utah;

That the proceedings were reported by me in stenotype and thereafter caused by me to be transcribed into typewriting, and that a full, true and correct transcription of said proceedings so taken and transcribed is set forth in the foregoing pages, inclusive.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

Kerry Sorensen, CSR/RPR My Commission Expires: June 21, 2005



DIVIGION OF OIL CAS & MIDIDIC	1 1 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
DIVISION OF OIL, GAS & MINING STATE OF UTAH	1 Informal Conference
STATE OF CTAIL	2 January 28, 2003
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~	3 PROCEEDINGS
INFORMAL CONFERENCE	4 THE CONFERENCE OFFICER: Well, let's g
TAKEN AT: Department of Natural Resources	5 ahead and get started, then. This is the 6 informal conference that was requested for the
1594 West North Temple	7 Cherry Hill Park Mine. We refer to that as
Conference Room A	8 M/049/021. We're conducting this under the
Salt Lake City, UT 84114	9 authority of Title 40-8, Utah Code.
DATE: January 28, 2003	10 A "conference" is defined inin the
DATE: January 28, 2003	11 Utah code as an "informal adjudicating
TIME: 10:25 a.m.	12 proceeding," and that's defined at 40-8-4. I'm
	13 going to read kind of an abbreviated definition of
REPORTED BY: Kerry J. Sorensen, RPR	14 an "adjudicative proceeding," just to kind of set
	15 the tone for what we're doing right here. That
	16 term is a Divisionand that's Division of Oil,
	17 Gas & Mining or Board of Oil, Gas, & Mining
	18 action or proceeding that determines the legal
	rights, duties or other legal interests of one or
	20 more identifiable persons, including actions to
	21 grant deny, revoke, suspend or amend an authority,
	22 license, or permit. So that'sthat's not a
	23 literal definition, but that's the essence of the
	24 definition of the statute.
	So we're looking, then, at a permitting
APPEARANCES	1 action that'sthat's taken place, and there's 2 been some concerns raised by the Division as to
DIVISION OF OIL, GAS AND MINING:	3 the timeliness of that action. And we apparently
Lowell P. Braxton, Conference Chairman	4 gave you, Dan, some options as to what you might
Mary Ann Wright	5 do, and you requested this informal conference, so
D. Wayne Hedberg	6 that's what we're doing right now.
Lynn Kunzler	7 One thing that I'll add before I turn
Lynn Kunzler	7 One thing that I'll add before I turn 8 this over to the Division, is that we have
Lynn Kunzier . ASSISTANT ATTORNEY GENERAL:	7 One thing that I'll add before I turn
	7 One thing that I'll add before I turn 8 this over to the Division, is that we have 9 procedures for dealing with evasion of the 10 chapter, which may be what we're dealing with
ASSISTANT ATTORNEY GENERAL:	7 One thing that I'll add before I turn 8 this over to the Division, is that we have 9 procedures for dealing with evasion of the 10 chapter, which may be what we're dealing with 11 right now. Those are enumerated in Chapter 40-8.
ASSISTANT ATTORNEY GENERAL: Steven F. Alder, Esq. ALSO PRESENT:	7 One thing that I'll add before I turn 8 this over to the Division, is that we have 9 procedures for dealing with evasion of the 10 chapter, which may be what we're dealing with 11 right now. Those are enumerated in Chapter 40-8, 12 specifically 40-8-9, and those procedures include
ASSISTANT ATTORNEY GENERAL: Steven F. Alder, Esq. ALSO PRESENT: Dan Powell	One thing that I'll add before I turn this over to the Division, is that we have procedures for dealing with evasion of the chapter, which may be what we're dealing with right now. Those are enumerated in Chapter 40-8, specifically 40-8-9, and those procedures include levelling civil penalties, cessation orders, and
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ASSISTANT ATTORNEY GENERAL: Steven F. Alder, Esq. ALSO PRESENT: Dan Powell	One thing that I'll add before I turn this over to the Division, is that we have procedures for dealing with evasion of the chapter, which may be what we're dealing with right now. Those are enumerated in Chapter 40-8, specifically 40-8-9, and those procedures include levelling civil penalties, cessation orders, and- and other options that are available to the Division. So Iasas we talk about where we're going today, I think we need to recognize that- that at least from mymy understanding of what's happening, this has been a clearly protracted permitting action, and we haven't done thisthis informal conference at the spur of the moment. I think there's a history here thatthat I'd like the Division to develop, and then if there's something, Dan, that you can do that'sthat's
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hear from you.

2

So with that, I'll turn it over to--to

Wayne Hedberg. 3

MR. HEDBERG: Okay. This morning, as Lowell indicated, the purpose of this informal conference is--is to provide the operator with an opportunity to come in and discuss the status of--of where he is at in terms of responding to the Division's requests for information and--and

10 the resolution of the outstanding permitting

requirements. What I'd like to do this morning 11 is have one of my staff members, Lynn Kunzler, read into the record at least some of the key 13 permitting history and chronology that has--will 14 15 kind of set the stage for where we began with the permitting process and the steps that we've gone 16

through to get us to where we are today. And I've provided you with a copy, Dan, of the chronology there, so you can follow along

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21 With that, I guess I'd like to turn--22 MR. KUNZLER: Okay. Summarizing 23 chronology, and there's a few entries on the 24 chronology I won't be discussing, history of the Cherry Hill Park Mine began, as far as the

response on that.

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October 27th of '97 we sent another request asking the operator to respond to that review, which was at that time over two years old.

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Page 8

December 4th of '97 the operator again requested a 90-day extension to submit that. This was subsequently denied by the Division. We felt that it already had been over two years and another 90 days wouldn't do anything, and we established a February 27th, 1998 deadline to have 12 the--the response in.

On February 27th we received a--a fax 14 from the operator which stated that he would reclaim a portion of the operation to get back under five acres, rather than submitting the--or proceeding with permitting as a large mining operation. His annual reports for that year indicated that there was about 13 acres of disturbance.

21 In December of '98 the Division sent a 22 letter again requesting a formal submission of all the permitting materials to date. The Division 23 24 had never received a certified copy of the map or 25 letter stating that sufficient acreage had not

Page 6

Division is concerned, on July 8th of 1992, when we received the small mining notice of intention to conduct operations at the Cherry Hill project. The next year, in July 22 of '93, we inspected the site and found that the site was in compliance with just slightly less than five acres of disturbance.

By July of--27th, 1994, another inspection occurred. We found and estimated the acreage to have exceeded the five acres, with an approximate seven acres of disturbance, and we were provided information at that time that the operator had posted a reclamation surety with Utah County to cover nine acres of disturbance.

In August the 24th of '94 we sent a letter to the operator requesting that a large mine notice be filed with the Division within 45 days.

In October he'd requested an extension 19 20 for 30 days. The Division granted that extension, and on November 14th of 1994 we received the 21 22 original large mining operation notice of 23 intention.

In June 2nd of 1995 the Division sent a 24 25 deficiency review of that notice requesting a--a been reclaimed to--to have him as a small mining operation.

So in March 3rd of 1999 we received a revised large mining operation notice.

In September 22nd of '99 we did a survey of the site during an inspection, using a GPS global positioning satellite system. We calculated that there was approximately 20.6 acres of disturbance on the ground. 19.7 acres of that would require reclamation. There was a small area of approximately nine-tenths of an acre that would remain unreclaimed at the request of the 13 landowner. Also, at that time there was about 4.3 acres that had been regraded.

September 30th of 1999 the Division completed a second deficiency review of the March 3rd '99 submittal.

In January 23rd of 2001 we again sent a certified letter requesting a response to our reviews, and established a 30-day time to do that.

20 21 May 7th of 2001 the operator came into 22 our office and claimed that the letter that we

23 had sent had been delivered to the wrong address.

24 We gave him another copy of the--the response in

the letter at that time and gave him until the

2 (Pages 5 to 8)



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end of June 2001 to respond.

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On June 29th of 2001 we received a letter from the operator requesting a meeting to discuss the review to make a time frame to make the submissions.

July 30th of 2001 we had a meeting to discuss the review. The operator was again granted 45 days to submit the information.

On September 17th of 2001 we received a phone call requesting another two-week extension. This was granted 'til October 1 of 2001.

January 22nd of 2002 we sent a certified Division directive. It had been over 100 days since we had extended the--past the extended deadline of October 1st of 2001, and he was asked to contact the associate director to schedule a meeting to remedy the situation.

On January 31st we received a phone 19 call with regards to that certified letter. He 20 indicated that he hadn't received it, we'd sent it to a Price address, and he says, "I live in Utah 21 County. I only get to Price every few weeks to 23 pick up the mail." We faxed him another copy of 24 that letter.

On February 11th the operator called

Page 11

deadline was established, drawn, the receipt of 2 the letter to post the surety. 3

On June 11th we received the response to the September 30th, 1999 review letter.

June 26th we had a site inspection. The site was inactive, but the operator did not show up for that scheduled inspection to discuss some of the concerns that were there on-site. Between July and December we'd had

10 several phone calls and personal contacts with the operator to discuss where the reclamation surety was. He indicated he was having troubles in 12 obtaining that surety. He indicated he'd been 13 talking with several surety companies, banks, etc., and it seemed like every time we talked to him he says, "Well, I think I've got it lined up. 16 17 I'll have it to you within a week to ten days." To date we still have not received that 18 19 reclamation surety.

On January 9th we sent a proposed agency action letter to Mr. Powell. This was hand delivered by the Utah County Sheriff's Office on January 14th. This letter outlined the procedures--or, the action the Division was--was taking in--to address the noncompliance, and gave

Page 10

and scheduled a--the meeting with the associate director for February 25th of--of 2002. 2

On February 19th we received another phone call requesting that we reschedule the meeting to early March, and that was subsequently scheduled for March 12th.

On March 12th of 2002 we met with Mr. Powell, the associate director in mineral staff. We went over the operator's responses to outstanding technical deficiencies, and Mr. Powell agreed to provide a formal response to the Division by March 22nd.

April 3rd of 2002 the Division called Mr. Powell, requesting the status of this technical response. It was now, again, overdue. He--the--at the time Mr. Powell indicated that he was having difficulty requiring the information needed, and with his taxes due he needed a couple more weeks so he could also comply with tax laws.

On May 14th of 2002 the Division issued a notice of noncompliance and Division directive.

22 We faxed, as well as certified mail, this to the 23 operator, ordering suspension of operations,

24 posting of the reclamation surety, and submitting

the reclaiming deficiencies. And a 30-day

Page 12

Mr. Powell the option of appealing either to the Board or to the Division director.

And that brings us to today where we're now in that hearing, or conference.

MR. HEDBERG: I think having read this 5 6 chronology into the record, as Lynn indicated this kind of brings us up to where we are today. And 8 I guess my position from this point would to give Mr. Powell an opportunity to rebut any of the 10 statements or records that we have indicated here, if he feels that they are in error or that 11 there's some corrections that need to be made. 12 13 We're here to--to listen to those, and, as well, any other updated information you may have in 14 15 terms of acquiring surety and completing this permitting process. 16

MR. POWELL: Okay. Well, thanks for giving me the opportunity to come in here and address this issue today. I didn't come prepared to rebut any allegations with regard to supposed evasive action on--on any regulations set up by the state to DOGM. I don't know where you're headed with that, but don't get yourself in

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trouble, that's all I can say. 24

I--I've never intended to do such. I--

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I am a one-man team. I don't have a--a full 2 staff of people walking around with their hands in their pockets, you know, from time to time, dreaming up how they can take rights from someone. 5 okay? I'm--I'm just a one-man team and I've done the best I--I can. 6

But I want to go over your little 7 chronology here. What I want to start with is 8 Q what--we want to focus on--on November 14th, 1994. when I--when we--the Division received the 10 original large mine application, okay? If I have 11 to hire an attorney, that's what I'm going to 12 13 focus on. I'm going to focus on November the 14 14th, 1994, when that was submitted and all of

15 these supposed--and I'm going to use your 16 language--"outstanding technical deficiencies,"

because I don't think there was any. I think you 17 18 went over the same issues time and time again--19 time and time again. And if I hire an attorney,

this will come out, okay, if I have to, but I 21 doubt I'll need one. 22

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From November the 14th, when we-when we filed this. I note that it took the Division-and I don't have the convenience or the luxury of having the--the state statutes before me, but I--I

Page 15

suspend, it was already suspended. If you had 2 gone down and done the inspections, like I'm 3 paying you to do, you would already know that. Let's see here. Oh, with--with--with

5 regards to the May 7th, 2001, "Operator came into the office...," you know, I love how you put your 6 7 letters together to make it look on-so bad on the claimant. You know what? When I do hire an 8 Q attorney, he's going to love this, how--how you 10 change things around, distort things, twist things to make--to make it look like I'm doing just that 11 you've claimed here, that's erroneous, okay? 12

"Operator came into the office, claimed a letter was sent to the wrong address to Steven Powell." Well, hell no, that couldn't be further from the truth. How that came up is I came in to Joell because you guys was calling me up saying I was supposed to receive a letter, and I did not--I did not--and I'm putting an asterisk by that--I did not find that out until Joell told me. She told me, I didn't tell her. So, you know, with-with all your effectiveness here in the--the DOGM offices, you ought to send it to the right address, okay? And--and that was--that was--and it was

Page 14

do know enough about the state statutes to know that--that the state's not permitted six or eight 3 months to come back with a response to a large

4 mine application, and--and then, when they do

5 come back with a response, put in it "outstanding technical deficiencies," that took me more than

eight years to not only understand, but I'll bet you that the--the--my response when--when you

stamped your satisfaction on it, it wasn't much 10 different than when it was received November the

14th. And if you want to push the issue, we'll 11 12 find out. And so I'm putting a lot of weight

on--on what you refer to as "outstanding technical 13 deficiencies," because I don't think there was 14

15 any. I don't think there was any. I don't think 16 there was any when--when I filed that on the 14th

of November 1994, and I don't think there's any 17 18 now. And I think they were the same.

And then on your November 14th, 2002 19 "order suspension of operation," there was no 20 order of suspension of operation, because I'd 21 22

already--I only operate when I have a market. 23 There wasn't anything that--to--to suspend from.

So, you know, you can--you can break the suspense 24 25

and the drama. There wasn't any order to--to-to

Page 16

more than--than what--it was--it goes beyond what someone claimed, it's a fact. DOGM sent it to 2 3 the wrong address. 4

MR. HEDBERG: That was the address you gave us.

MR. POWELL: Yeah. I'm not running--I'm not doing your work for you, partner.

8 THE CONFERENCE OFFICER: Did you o provide that address that we sent it to? 10 MR. POWELL: Did I provide it?

11 THE CONFERENCE OFFICER: Yes. 12 MR. POWELL: I don't know where you got

it. You answer that yourself. THE CONFERENCE OFFICER: Well, I'm just

15 asking a question--MR. KUNZLER: It was an address you had 16

17 provided to us. MR. POWELL: You're full of crap, 18

19 Kunzler. That was--I don't know where you got it. THE CONFERENCE OFFICER: Okay. Well, 20 let's--let's keep going. 21

MR. POWELL: Hey--hey, let me tell you 22 23 something. That party that you sent that to is

24 my competition, and if he--if they use that

information that you sent them, you are going to

4 (Pages 13 to 16)



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#### Page 17

get sued, and remember that. That's a competing corporation. That information you sent them is classified, and I asked that it be classified. confidential. So when you're--when you're doing your little paperwork, remember that. You came up with that address. That's my competition's. Why would I give you my competition's address, okay?

So I'll get down to the nuts and bolts

here. As far as the letter that you sent, it 10 looks like that we're--you know, with all of this 11 bull crap about stalling and--and holding things back, we're down to one issue, okay, and that's-that's Item Number 3, the bond. So what I'm 13 14 going to do is I'm going to go over a history 15 of--of my attempts to satisfy that, okay?

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16 Back in the--in July--or--or June, 17 after I submitted that information that satisfied 18 the Items 1 and 2. I started working immediately on that, okay? And if you want to--if you want to 19 20 make a copy of this card and call those people,

21 you can do that. I made application at Wiseman 22 Insurance Agency, 289 East Center; Provo, Utah,

23 okay, and I went to a gentleman by the name of 24 Rob. I filed an application. 25

THE CONFERENCE OFFICER: Excuse me.

Page 19

denied, okay? And I--and I made applications with 2 them.

3 I later went to Key Bank and made 4 application for a letter of credit, and I dealt with a loan processor. His name was Adam 5 6 Christensen, and--and Nathan Walker. He's with-he's a relationship manager for Key Bank. And 7 their office was on Orem Parkway Key Center in 9 Orem. And, according to them--I sat down with

10 them after they reviewed my application and stuff. And they was two parts to the letter of credit. 11 12 for the amount of 43,500, and I have the

13 application right here, okay?

THE CONFERENCE OFFICER: What's the date of the application?

MR. POWELL: The date of the application is--I don't see a date on it, okay?

Anyway, when I sat down with them they 18 said there was two parts of it. There was 19 20 corporate assets for--for security, collateral

21 security, and then the other part to it was, you

know, how much business are we currently doing? 22

Well, the--the core is not operating, we don't have a cash flow, and that was our downfall. He

said without a cash flow he couldn't give me the

Page 18

When--when did you do that?

MR. POWELL: Immediately after-immediately at the time that I was filing the information in June. So it was June--June or July.

THE CONFERENCE OFFICER: Of what year?

MR. POWELL: In fact, I've got--THE CONFERENCE OFFICER: Excuse me,

please. What year did you do that? MR. POWELL: 2002. 10

THE CONFERENCE OFFICER: Okav. Thanks. 11

12 MR. POWELL: I've got your late--late

13 June, early July I made application with Wiseman. 14 It was--it's actually a process. There's--there

were several documents that I had to--to file with 15

them, okay? And I didn't hear back from Weisman. 16 I--I--I filed my documents with Weisman, I never 17

18 heard back from them. And then in the fall-sometime in the fall, when I contacted them back, 19

20 they said that their underwriter had--had quit

21 doing that, okay? They had quit doing the 22 reclamation bonds, reclamation surety, okay?

23 So if you want to call them and ask 24 them why their underwriter doesn't do that

anymore, that's up to you All I know is I was

Page 20

letter of credit, okay? And so we--we--Emery Industrial Resources was denied that letter of 2

3 credit.

After that I went back to Wiseman's. 4 5 trying to make some headway there and find out

some facts, and, you know, all Wiseman told me is they gave me another bonding agency. They gave

me the name of Cindy Parmley with CornerStone 8 Insurance in Orem. And so I went--I've gone to-to CornerStone and I've made applications, and

I've brought back the letter here. And I--if you

want to make a copy of this and keep it for your 13 records, you can, but I--and you can keep the

original, if you want to, but I need a copy for 15 my file. 16

THE CONFERENCE OFFICER: Okay. Thank 17 you.

18 MR. POWELL: And so, you know, it's 19 still--it's still in process and there's--there's 20 no evasiveness involved in it. And if you want--

21 if you want to push that issue, I'll be glad to entertain it. 22

23 THE CONFERENCE OFFICER: That's your 24 statement?

MR. POWELL: That's my statement.

5 (Pages 17 to 20)



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Page 21 Page 23 THE CONFERENCE OFFICER: Okav. But--THE CONFERENCE OFFICER: Tell me, why has it taken so long to get to where we are? 2 but do you understand that it's--you're the one 2 that's supposed to provide the maps when--when you MR. POWELL: You ask yourself. You ask 3 3 yourself that. 4 do a permit application? THE CONFERENCE OFFICER: No, I'm asking 5 MR. POWELL: I--I don't understand that. I have supplied the maps. you. I'm asking you specifically. 6 6 MR. POWELL: Well, I--I think that 7 THE HEARING OFFICER: So there's a there's--I--I'd say that there's two reasons. I'd 8 substantial difference between you and the say, number one, I'd--I'd say the state's drug 9 Division in terms of the--the reclamation 10 their feet, and, number two, I--me being alone 10 disturbance-and--and having to do all of these requirements MR. POWELL: You'd better answer that 11 11 myself, I think it's taken more time. 12 yourself. 12 THE CONFERENCE OFFICER: Well, I'm THE CONFERENCE OFFICER: And--and do 13 13 you understand that--that under the law you 14 14 asking you. 15 shouldn't have created any of this disturbance 15 MR. POWELL: Yeah. without a permit and an adequate bond? Do--do 16 THE CONFERENCE OFFICER: That's what 16 17 you understand that part of the law? 17 vou're here for. MR. POWELL: Well, I--I feel we've MR. POWELL: I--I--I go by my maps, 18 18 okay? I go by the maps I furnished. 19 lived up to the law. 19 20 THE CONFERENCE OFFICER: So do you 20 THE CONFERENCE OFFICER: And are those maps certified or--or done by a certified surveyor 21 agree on the amounts of disturbance that are shown 21 22 or anything like that? 22 in the--in the chronology that we presented you 23 23 MR. POWELL: They started out that way. with? 24 MR. POWELL: I don't. I don't agree 24 THE CONFERENCE OFFICER: Has the--has 25 with the amount that--the land and I don't agree 25 the amount of disturbance increased from the time Page 22 Page 24 with the--the amounts that the state has set for that you've been working with us to acquire a permit? In other words, can we--can we agree the reclamation. And I've--I've expressed that 2 3 that this started off as a small mining operation to--to Lynn on several occasions, and I know that 3 4 he doesn't have that in his notes. 4 with less than five acres' disturbance? THE CONFERENCE OFFICER: Do you-5 MR. POWELL: I would say that--I'd say 5 MR. POWELL: Make that part of the 6 yes to that, but I'd say that there was quite a 6 7 bit of disturbance when we started, and I think 7 record. 8 THE CONFERENCE OFFICER: Well, it is. 8 that should be taken into account. 9 9 THE CONFERENCE OFFICER: So it was It's--10 MR. POWELL: Yeah. 10 disturbance that was created by a different operator? THE CONFERENCE OFFICER: It's being--11 11 12 it's what we're creating. 12 MR. POWELL: That's right. It was--it MR. POWELL: Yeah. Make that part of 13 13 was--it was disturbed by Loudermouth Construction back in the late '70s. In fact, let me--if 14 the record. 14 15 THE CONFERENCE OFFICER: Do--do you 15 vou've got--let me--can I see vour map there? Okay. Okay. But let me ask a few questions, if 16 understand that--MR. POWELL: Your 43.5, I could get I might. Who put this together? Who put this 17 17 someone to go down there and do the reclamation 18 18 map together? MR. KUNZLER: I did. 19 that's two state spec.'s for about a third of 19 MR. POWELL: Okay. What did you create 20 that. 20 THE CONFERENCE OFFICER: Do you agree 21 21 it from, Lynn? with the surface disturbance that we're talking 22 MR. KUNZLER: I created that map from 22

6 (Pages 21 to 24)

the GPS data that I collected and overlaid it on

MR. POWELL: Okay. On a--on a--on a

top of the USGS topographical map.



about in--in terms of the number of acres?

I've already said that.

MR. POWELL: I don't. I've already--

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Page 25 United States topographical map. What is this 2 little square--or that little emblem there, that little icon? What is that? 3 MR. KUNZLER: It--it indicates that 4 there was--as of that map, that there was some 5 type of mining related disturbance. They'd called 6

7 it a gravel pit. MR. POWELL: So do you know the date 8 9 that was on that map?

10 MR. KUNZLER: I do not--11 MR. POWELL: Okay.

MR. KUNZLER: --at this time. I'd have 12

13 to go look and see what the--

MR. POWELL: Well, just tell me what 14 you think. What--what would you say? When do 15 you think that map was made? Do you think it was 16 prior to the time that we started there? 17

MR. KUNZLER: I--I--as far as the map I 18 19 used, no. It's probably been updated within the 20 last ten years.

21 MR. POWELL: So when did we start? 22 MR. KUNZLER: You started a small mine 23 11 years ago.

24 I don't know the date of the map. It 25 was--it's a computer generated map, and they-- MR, POWELL: Okay.

THE CONFERENCE OFFICER: Let's--let's 2 3 look at page .2 on the chronology, Mr. Powell, if

Page 27

you wouldn't mind. And--and I'm seeing two--

two acres--two acreage amounts. Look at the

September 22nd, 1999. We're GPSing and seeing 19 6

or 20 acres, and you're submitting an annual

report a few months after that, January 29th, 2001 that identifies eight acres of disturbance.

MR. POWELL: Uh-huh.

THE CONFERENCE OFFICER: What--what do

12 the permits--

10

11

13 MR. POWELL: I don't--I don't think we've ever--I don't think we--in any of our annual 14

reports I don't think you can find one where we 15

exceeded 13 acres. And that was by our own

17 estimates. And out of the 13 we reclaimed five, what we feel is five acres. So that's why it went

18 back down to eight.

19 20

THE CONFERENCE OFFICER: Okay. Is

21 there anything that--that we can agree on in terms

of your willingness to--to comply with posting a 22

bond and/or reclaiming the disturbances that 23

you've created, or are we at loggerheads right now

25 in terms of--of where we're going, because I don't

Page 26

MR. POWELL: Well, if--

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2 MR. KUNZLER: --try to keep them 3 updated with--

MR. POWELL: Is there a chance--is there any chance--

MR. KUNZLER: There--there is. And I'm not--we're not arguing that there was something there before you moved in.

MR. POWELL: Okay. That's the point 10 I'm trying to make. Thank you.

MR. KUNZLER: And we've never argued 11 12

MR. POWELL: Okay.

MR. KUNZLER: And, in fact, the portion on that map that shows--that's identified as not needing--needing reclamation is old disturbance that was done prior to you being there, that you are not reimpacting, reusing, necessarily.

19 MR. POWELL: Yeah. Well, that's the 20 remnants. That's--that's the remnants of what you 21 can--that you--that you--

22 MR. KUNZLER: But--but--but the law 23 says that if you reuse areas that were previously 24 disturbed you do have a responsibility for

25 reclamation of those areas. Page 28

want to protract this--conference if--if that's 2 the case.

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3 MR. POWELL: Did you see that document that I just handed to you?

THE CONFERENCE OFFICER: I can see it

in front of me right now. MR. POWELL: Maybe you ought to read

it. And--and those words that you're using is twisting and distorting the record, and I want it corrected, and let's quit playing games. 10

THE CONFERENCE OFFICER: Well, then I think if--do you have anything else you want to say?

14 MR. POWELL: That's it.

15 THE CONFERENCE OFFICER: Do you have 16 any--

MR. POWELL: I'll let that document 17 speak for itself. 18

19 THE CONFERENCE OFFICER: Then I think 20 we'll conclude by saying that we have unreclaimed

21 disturbance and unbonded disturbance right here.

22 I'm going to--to review this letter that you

23 suggested that we do, and I'm going to make a 24 finding on this, and I'll have those findings to

25 you within 30 days.

7 (Pages 25 to 28)



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	Page 29	
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1	MR. POWELL: Great. I'll be waiting	
2	for it. In the meantime, I'll be working on my	
3	bond.	
4	THE CONFERENCE OFFICER: And do we have	
5	a correct address for you?	
6	MR. POWELL: What address have you been	
7	sending it to?	
8	THE CONFERENCE OFFICER: I'm asking	
9	you. Youyou asserted that we didn't have an	
10	adequate address. Is the address that we have on	
11	the record right now your current address, your	
12	current business address?	
13	MR. POWELL: And whatwhat address is	
14	that, sir?	
15	THE CONFERENCE OFFICER: Please read	
16	that, Wayne.	
17	MR. HEDBERG: We have athe last	
18	letter that was sent, and I believe it was sent	
19	to his home address, which is 62 South 800 West;	
20	Payson, Utah 84651.	
21	MR. POWELL: Thatthatthat's great.	
22	THE CONFERENCE OFFICER: That's where	
23	we should be sending business records?	
24	MR. POWELL: Either that one or the	
25	P.O. Box 489; Price, Utah 84501. Either one of	
	Page 30	
1	•	
1 2	those will get to me. But sending it to my	
2	those will get to me. But sending it to my competition is not only against the law, that's	
2 3	those will get to me. But sending it to my competition is not only against the law, that's the wrong address, and nobodynobody that deals	
2 3 4	those will get to me. But sending it to my competition is not only against the law, that's the wrong address, and nobodynobody that deals with Emery Industrial Resources ever authorized	
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2 3 4 5 6	those will get to me. But sending it to my competition is not only against the law, that's the wrong address, and nobodynobody that deals with Emery Industrial Resources ever authorized that, ever.  Thank you.	
2 3 4 5 6 7	those will get to me. But sending it to my competition is not only against the law, that's the wrong address, and nobodynobody that deals with Emery Industrial Resources ever authorized that, ever.  Thank you.  THE CONFERENCE OFFICER: Thank you for	
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8 (Pages 29 to 30)



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amounts 21:21 22:1 22:19.23 accourding 19:9 accourd 24:8 acquiring 12:15 acre 8:11 acrea 8:10 acres 6:6,10.11,14 7:16,19 8:8,9,14 22:23 24:4 27:57 27:9,16,18 acres 4:25 action 3:18 4:13,19 11:21,24 12:21 action 3:20 actonal 19:5 act 4:25 action 3:18 4:13,19 11:21,24 12:21 action 3:20 actonal 19:5 act 4:25 action 3:18 4:13,19 11:21,24 12:21 action 3:20 action 3:20 action 3:18 4:13,19 11:21,24 12:21 action 3:20 action	abbreviated 3:13		back 7:15 14:3,5		
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account 24:8 acquire 24:1 another 6:8 7:2,10 acre 8:11 screes 6:10 7:25 27:5 acre 8:61,01,11,14 22:23 24:4 27:5,7 27:9,16,18 acre 4:25 action 3:18 4:1,3,19 11:21,24 12:21 actions 3:20 actually 18:14 Adam 19:5 actions 3:20 actually 18:14 add 4:7 address 8:23 9:21 11:25 12:19 15:14 15:24 16:34,9,16 29:10,11,12,13,19 30:3 again 7:6,22 8:18 again 7:6,22 8:	22:19,23				
acquire 24:15 acquiring 12:15 acre 8:11 acre 8:10 arces 6:6,10,11,14 anything 7:10 14:23 22:23 24:4 27:5,7 27:9,16,18 acret 3:24 anything 7:10 14:23 anything 7:10 14:	according 19:9	1	bad 15:7		
acquiring 12:15 acres 6:10 7:25 arr 8:11 acreage 6:10 7:25 27:5 answer 16:13 23:11 anymore 18:25 being 21:10 22:11 26:17 27:9, 16:18 acre 4:25 23:24 27:27 12:8:12 27:9, 16:18 acre 4:25 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:12 23:22 27:21 28:22 23:22 27:21 28:22 23:22 27:21 28:22 23:22 27:24:22 27:24 23:22 27:24 23:22 27:24 23:22 27:24 23:22 27:24 23:22 27:24 23:22 27:24 27:27 28:25 22:22 24:22 27:24 23:22 27:24 23:22 27:24 23:24 27:24 23:24 23:24 27:24 23:24 23:24 23:24 27:24 23:24 23:24 27:24 23:24 23:24 27:24 23:24 27:24 23:24 27:24 23:24 27:24 27:24 27:24 27:24 28:24 27:24 27:24 28:24 27:24 27:24 28:24 27:24 27:24 28:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:24 27:2	account 24:8		Bank 19:3,7	1	
acre 8:11 20:3 description 19:1 30:3 areage 6:10 7:25 acres 6:6,10,11,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:10 14:23 7:29:10 actually 18:14 Adam 19:5 actions 3:20 actions 3:20 actions 3:20 actually 18:14 Adam 19:5 add 4:7 address 8:23 9:21 11:25 12:19 15:14 14:4 17:21,24 application 13:11 14:4 17:21,24 application 13:11 14:4 17:21,24 application 13:11 15:24 16:3,4,9,16 17:6,7 29:5,6,10 29:10 10 adjudicating 3:11 addequate 21:16 29:10 20:4 27:8 again 7:20 20:12 20:10 adjudicating 3:11 adjudicative 3:14 adret 17:17 18:2 19:10 20:4 27:8 again 7:0 14:23 20:10  approximate 6:11 approximately 8:8 8:11 April 10:13 area 8:10 area	acquire 24:1		banks 11:14		L
acreage 6:10 7:25 acres 6:6,10,11,14 7:16,19 8:8,9,14 22:23 24:4 27:5,7 27:9,16,18 act 4:25 action 3:18 4:1,3,19 11:21,24 12:21 action 3:20 actually 18:14 Adam 19:5 add 4:7 address 8:23 9:21 11:25 12:19 15:14 15:24 16:3,4,9,16 17:6,7 29:5,6,10 29:10,11,12,13,19 30:3 adequate 21:16 29:10 adjudicating 3:11 adjudicativg 3:14 adipudicativg 3:14 adipudicativg 3:14 adipudicativg 3:14 adjudicativg 3:14 adjudicat			before 4:7 13:25		
arses 6:6,10,11,14 arymore 18:25 acres 6:6,10,11,14 22:23 24:4 27:5, 27:9,16,18 act 4:25 action 3:18 4:1,3,19 11:21,24 12:21 actions 3:20 actually 18:14 Adam 19:5 add 4:7 address 8:23 9:21 11:25 12:19 15:14 15:24 16:3,4,9,16 17:6,7 29:5,6,10 29:10,11,12,13,19 30:3 adequate 21:16 29:10 adjudicating 3:11 adjudicativa 3:14 adipudicativa 3:14 adretr 17:17 18:2 19:10 20:4 27:8 agains 7:6,22 8:18 agains 7:6,22 8:18 agains 3:0:2 agency 11:21 17:22 20:7 ago 25:23 agence 21:21,24,25 22:21 24:2 27:21 agreed 10:11 asked 9:16 17:3 agreed 21:11 asked 3:5 Alder 2:10 allegations 12:20 alone 21:10 anymore 18:25 action 3:20:1 believe 29:18 betieve 29:18 betiain 6:1 bit 24-7 bonds 18:22 bots 17:8 bonding 20:7 bonds 18:22 competition's 17:6 completing 12:1 completing 12:15 completing 12:15 completing 12:15 completing 12:15 completed 8:16 comply 10:19 27:22 competer 25:25 concerned 6:1 completing 12:15 completed 8:16 comply 10:19 27:22 completed 8:16 comply 10:19 27:22 competer 29:3 ctually 18:44 April 10:13 area 8:10 area 8:10 asked 9:16 17:3 between 11:9 23:8 come 5:7 10:18,18 come 8:21 15:10 completing 12:15 completing 12:15 completing 12:15 completing 12:15 completing 12:15 completing 13:16 come 8:10 come 12:10 completing 12:10 completing 12:15 c	acre 8:11		26:8		
acres 6:6,10,11,14 acres 6:6,10,11,14 22:23 24:4 27:5,7 27:9,16,18 act 4:25 action 3:18 4:1,3,19 appealing 12:1 Anyway 19:18 act 4:25 action 3:20 actually 18:14 Adam 19:5 addequste 21:16 29:10 11:25,12:19 15:14 15:24 16:3,4,9,16 17:6,7, 29:5,6,10 29:10,11,1,12,13,19 30:3 adequate 21:16 29:10 29:10,11,1,12,13,19 30:3 adequate 21:16 29:10 29:10,11,1,12,13,19 30:3 adequate 21:16 29:10 approximately 8:8 8:11 April 10:13 area 8:10 adjudicating 3:11 adjudicating 3:11 adjudicating 3:11 adjudicating 3:11 aggian 7:6,22 8:18 9:7 10:15 13:18 13:19 again 7:6,22 8:18 9:7 10:15 13:18 21:5,6 23:14 29:8 against 30:2 aggency 11:21 17:22 20:7 around 13:2 15:10 aggian 7:6,22 8:18 39:7 10:15 13:18 39:7 10:15 13:18 39:7 10:15 13:18 39:7 10:15 13:18 39:10 20:4 27:2 20:7 around 13:2 15:10 area 8:10 ASSISTANT 2:9 associate 9:16 10:1 10:8 asteried 29:9 asset 19:20 ASSISTANT 2:9 associate 9:16 10:1 10:8 asteried 29:9 asset 19:20 ASSISTANT 2:9 associate 9:16 10:1 10:8 asteried 29:9 asset 19:20 ASSISTANT 2:9 associate 9:16 10:1 10:8 asteried 29:9 asset 19:20 ASSISTANT 2:9 associate 9:16 10:1 10:8 asteried 29:9 asset 19:20 ASSISTANT 2:9 associate 9:16 10:1 aliguing 3:1 altempts 17:15 altempts 17:15 altempts 17:15 alteried 7:24, 8:19 alteried 2:29:13 better 2:11 better 2:1:1 better 3:1:1 better 17:12:2 classified 17:3,3 claimant 15:8 claimant 15:3 better 2:1:1 collateral 19:20 comertic 19:20 comertic 19:20 comertic 19:20 comertic 19:30 comertic 19:	acreage 6:10 7:25		began 5:15,25		
acres 6:6,10,11,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,9,14 7:16,19 8:8,11 7:16,19 8:8,11 7:16,19 8:8,11 7:16,19 8:8,11 7:16,19 8:8,11 7:16,19 8:8,11 7:16,19 8:8,11 7:16,19 8:8,11 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:13 7:16,19 8:23 7:16,19 8:13 7:16,19 8:23 7:16,19 8:23 7:16,19 8:23 7:16,19 8:23 7:16,19 8:23 7:16,19 8:23 7:16,19 8:23 7:16,19 8:23 7:16,19 8:23 7:16,19 8:23 7:16,19 8:23 7:16,19 8:23 7:16,19 8:23 7:16,19 8:23 7:16,19 8:23 7:16,19 8:23 7:16,19 8:23 7:16,19					
7:16,19 8:8,9,14 22:23 24:4 27:5,7 27:9,16,18 act 4:25 action 3:18 4:1,3,19 11:21,24 12:21 actions 3:20 actually 18:14 Adam 19:5 add 4:7 address 8:23 9:21 11:25 12:19 15:14 11:25 12:19 15:14 129:10,11,12,13,19 30:3 adequate 21:16 29:10,11,12,13,19 30:3 area 8:10 approximate 6:11 approximately 8:8 8:11 bond 17:13 21:16 27:23 29:3 bonding 20:7 bonds 18:22 bonds 18:22 bond 17:13 21:16 27:23 29:3 bonding 20:7 bonds 18:22 bond 17:10 2:0 bond 17:13 21:16 27:23 29:3 bonding 20:7 bonds 18:22 bond 17:10 2:0 bond 17:13 21:16 27:23 29:3 bonding 20:7 bonds 18:22 bond 17:10 2:0 bond 17:13 21:16 27:23 29:3 bonding 20:7 bonds 18:22 bond 17:10 2:0 bond 17:13 21:16 27:23 29:3 bonding 20:7 bonds 18:22 bond 17:10 2:0 bond 18:22 0:0 bond 19:20 competition 16:24 competition's 17:6 completion's	acres 6:6.10.11.14		•		CornerStone 20:8
22:23 24:4 27:5,7 27:9,16,18 act 4:25 action 3:18 4:13,19 11:21,24 12:21 actions 3:20 actually 18:14 Adam 19:5 add 4:7 address 8:23 9:21 11:25 12:19 15:14 15:24 16:3,4,9,16 17:6,7 29:5,6,10 29:10,11,12,13,19 30:3 adequate 21:16 29:10 adjudicating 3:11 adjudicative 3:14 after 17:17 18:2 agian 7:6,22 8:18 9:7 10:15 13:18 9:7 10:15 13:18 9:7 10:15 13:18 9:7 10:15 13:18 20:17 against 30:2 agency 11:21 17:22 agency 11:21 17:22 agency 11:21 17:22 agered 10:11 ahead 3:5 Alder 2:10 allegations 12:20 along 5:19 along 5:19 already 7:9 14:22 already 7:9 14:22 arctions 3:20 actually 18:14 Appaling 12:1 Appaling 12:1 Appaling 12:1 Appaling 12:1 bett 14:7 between 11:9 23:8 beyond 16:1 bit 24:7 bolts 17:2 bold 3:17 12:2 bolts 17:8 completing 12:16 competition 16:24 30:2 created 21:16 27:23 29:3 bonding 20:7 bomodal 18:22 bomodal 7:13 21:16 competition 16:24 30:2 competition 16:24 30:2 competition 16:24 30:2 created 21:15 22:10 competition 16:24 30:2 created 21:15 22:10 competition 16:24 30:2 competition 16:24 30:2 completion 16:24 57:20 29:12.23 completion 16:24 completion 16:24 completion 16:24 57:20 29:12.23 completion 16:24 57:20 29:12.23 completion 16:24 completion 1		anything 7:10 14:23		claimant 15:8	20:10
279-16,18 act 4:25 act 4:25 act 4:25 apparently 4:3 application 13:11 14:4 17:21,24 18:13 19:4,10,13 19:15,17 23:4 address 8:23 9:21 11:25 12:19 15:14 15:24 16:3,4,9,16 20:10 approximate 6:11 approximately 8:8 8:11		23:22 27:21 28:12	l .	claimed 8:22 15:12	corporate 19:20
act 4:25 action 3:18 4:13,19 11:21,24 12:21 actions 3:20 actually 18:14 Adam 19:5 add 4:7 address 8:23 9:21 11:25 12:19 15:14 15:24 16:34,9,16 17:6,7 29:5,6,10 29:10,11,12,13,19 30:3 adequate 21:16 29:10 adjudicating 3:11 adjudicative 3:14 after 17:17 18:2 19:10 20:4 27:8 again 7:6,22 8:18 9:7 10:15 13:18 13:19 again 7:6,22 8:18 29:7 10:15 13:18 29:7 10:15 13:18 29:7 20:7 ago 25:23 agree 21:21,24,25 20:7 ago 25:23 agree 21:21,24,25 22:2 20:7 ago 25:23 agree 21:21,24,25 22:2 20:7 ago 25:23 agree 21:21,24,25 22:2 20:7 ago 25:23 agree 21:21,24,25 ag		Anyway 19:18	j	15:13 16:2	corporation 17:2
action 3:18 4:1,3,19 11:21,24 12:21 actions 3:20 applications 13:11 14:4 17:21,24 applications 19:1 20:10 20:10 20:10 approximate 6:11 approximately 8:8 8:11 April 10:13 area 8:10 approximately 8:8 8:11 adjudicative 3:14 adfeer 17:17 18:2 19:10 20:4 27:8 again 7:6,22 8:18 again 7:0:15 13:18 13:19 actions 19:1 action 13:11 action 13:11 action 10:13 area 8:10 area				classified 17:3,3	correct 29:5
11:21,24 12:21 actions 3:20 actually 18:14 Adam 19:5 add 4:7 address 8:23 9:21 11:25 12:19 15:14 29:10,11,12,13,19 30:3 adequate 21:16 29:10 adjudicating 3:11 adjudicating 3:11 adjudicating 3:11 adjudicative 3:14 after 17:17 18:2 19:10 20:4 27:8 again 7:6,22 8:18 9:7 10:15 13:18 29:10 12:2 20:7 ago 25:23 agency 11:21 17:22 20:7 ago 25:23 agency 11:21 17:22 20:7 ago 25:23 agreed 10:11 ahead 3:5 Alder 2:10 along 5:19 allegations 12:20 alone 21:10 along 5:19 allegations 12:20 alone 21:10 allegations 12:20 alone 21					corrected 28:10
actions 3:20 actually 18:14 Adam 19:5 add 4:7 address 8:23 9:21 11:25 12:19 15:14 15:24 16:3,4,9,16 17:6,7 29:5,6,10 29:10,11,12,13,19 adequate 21:16 29:10 adjudicating 3:11 after 17:17 18:2 19:10 20:4 27:8 again 7:6,22 8:18 9:7 10:15 13:18 13:19 against 30:2 agency 11:21 17:22 20:7 ago 25:23 agree 21:21,24,25 20:7 ago 25:23 agree 21:21,24,25 22:10 allegations 12:20 along 5:19 allegations 19:20 allegations 19:20 allegations 19:20 allegations 19:20 allegations 19:20 alled 9:25 10:13 actually 18:14 applications 13:11 14:4 17:21,24 18:13 19:4,10,13 19:15,17 23:4 18:13 19:4,10,13 19:15,17 23:4 12:0 bond 17:13 21:16 27:23 29:3 bond 18:22 Box 29:25 Braxton 2:4 break 14:24 competition 16:24 30:2 come 5:7 12:18.19 13:20 14:3.5 coming 30:8 companies 11:14 competition 16:24 30:2 compliance 4:24 6:6 compliance 19:20 competition 16:24 30:2 compliance 4:24 6:6 compliance 4:			1	code 3:9,11	corrections 12:12
actually 18:14 Adam 19:5 add 4:7 add ress 8:23 9:21 11:25 12:19 15:14 15:24 16:3,4,9,16 17:6,7 29:5,6,10 29:10,11,12,13,19 30:3 adequate 21:16 29:10 adjudicating 3:11 adjudicative 3:14 after 17:17 18:2 again 7:6,22 8:18 associate 9:16 10:1 attempts 17:1 buil 17:11 business 19:22 computer 29:22 computer 3:2 competition 16:24 anul 13:2 1:16 completid 8:16 completed 8:16 completid 8:16 completid 8:16 completid 8:16 completed		2:1		collateral 19:20	County 6:14 9:22
Adam 19:5 add 4:7 address 8:23 9:21 11:25 12:19 15:14 11:25 12:19 15:14 11:25 12:19 15:14 11:25 12:19 15:14 11:25 12:19 15:14 applications 19:1 20:10 approximate 6:11 approximately 8:8 30:3 adequate 21:16 29:10 adjudicating 3:11 adjudicative 3:14 after 17:17 18:2 19:10 20:4 27:8 again 7:6,22 8:18 9:7 10:15 13:18 13:19 20:7 asked 9:16 17:3 asking 7:3 16:15 21:5,6 23:14 29:8 against 30:2 agency 11:21 17:22 20:7 agree 21:21,24,25 20:7 agree 21:21,24,25 20:21 24:2 27:21 agreed 10:11 agree 21:21,24,25 21:21 24:22 7:21 agreed 10:11 agree 21:21,24,25 again 5:19 altenday 7:9 14:22 add 4:7 alt: 4 17:21,24 bolts 17:8 bond 17:13 21:16 27:23 29:3 bolts 17:8 bond 17:13 21:16 27:23 29:3 bonding 20:7 bonds 18:22 Box 29:25 Braxton 2:4 break 12:24 break 12:24 break 12:24 break 12:24 competition 16:24 30:2 completed 8:16 completion 16:24 30:2 completed 8:16 completion 16:24 creating 20:12 completion 16:24 30:2 completed 8:16 completion 16:24 creating 20:12 completed 8:16 completion 16:24 sompletion 16:24 sompletion 16:24 creating 20:12 completion 16:24 creating 21:12 completion 16:24 sompletion 16:24 sompletion 16:24 creating 22:12 completion 16:24 sompletion 16:24 creating 22:12 completed 8:16 completion 16:24 sompletion 16:24 sompletion 16:24 creating 22:12 completed 8:16 completion 16:24 sompletion 16:24 sompletion 16:24 creating 22:12 completion 16:24 sompletion 16:24 creating 22:12 completed 8:16 completion 16:24 sompletion 16:24 creating 22:12 completed 8:16 completed 8:16 completion 16:24 sompletion 16:24 sompletion 16:24 creating 22:12 completed 8:16 completion 16:24 sompletion 16:24 sompletion 16:24 creating 22:12 completed 8:16 com		application 13:11		collected 24:23	11:22
add 4:7 address 8:23 9:21 11:25 12:19 15:14 15:24 16:3,4,9,16 17:6,7 29:5,6,10 29:10,11,12,13,19 30:3 adequate 21:16 29:10 adjudicating 3:11 adjudicative 3:14 after 17:17 18:2 19:10 20:4 27:8 again 7:6,22 8:18 9:7 10:15 13:18 13:19 against 30:2 agency 11:21 17:22 20:17 agreed 10:11 agreed 10:11 agreed 10:11 agreed 10:13 agree 21:21,24,25 22:21 24:2 27:21 agreed 10:11 agreed 10:13 agreed 21:10 allegations 19:2 allegations 19:4 alled 2:10 allegations 19:2 allong 5:19 already 7:9 14:22 already 7:9 14:22 apainst 30:2 again 7:6,22 8:18 agreed 20:21 agreed 10:11 attorney 2:9 13:12 allegations 19:2 allegations 19:4 approximate 6:11 approximate 6:11 approximate 6:11 approximate 6:11 approximated 8:8 8:11 April 10:13 area 8:10 areas 26:23,25 area 8:10 areas 26:23,25 around 13:2 15:10 asked 9:16 17:3 asking 7:3 16:15 21:5,6 23:14 29:8 asserts 19:20 ASSISTANT 2:9 associate 9:16 10:1 10:8 asterisk 15:19 attorney 2:9 13:12 allone 2:10 allegations 12:20 allone 2:10 allegations 19:20				come 5:7 12:18.19	couple 10:18
address 8:23 9:21 11:25 12:19 15:14 15:24 16:3,4,9,16 17:6,7 29:5,6,10 29:10,11,12,13,19 30:3 adequate 21:16 29:10 adjudicating 3:11 adjudicative 3:14 after 17:17 18:2 19:10 20:4 27:8 again 7:6,22 8:18 9:7 10:15 13:18 13:19 against 30:2 agency 11:21 17:22 20:2 agency 11:21 17:22 agree 21:21,24,25 20:21 24:2 27:21 agreed 10:11 agreed 10:11 agreed 10:11 agreed 10:11 agreed 10:11 agreed 10:11 agreed 10:12 agreed 10:12 agreed 10:13 attempts 17:15 attorney 2:9 13:12 Alder 2:10 allegations 12:20 allong 5:19 altroity 3:9,21 authorized 30:4 available 4:14 approximately 8:8 ponding 20:7 bonds 18:22 Box 29:25 Braxton 2:4 break 14:24 brings 12:3,7 brought 20:11 business 19:22 29:12,23 completing 17:1 competition 16:24 30:2 competition 16:24 30:2 competition's 17:6 completing 12:15 completed 8:16 completion 16:24 30:2 competition 16:24 30:2 competition 16:24 30:2 competition 16:24 30:2 competition 16:24 30:2 competition's 17:6 competition 16:24 30:2 completed 8:16 completed 9:12:15 competition 16:24 30:2 competition's 17:6 competition 16:24 30:2 competition's 17:6 competition's			·	13:20 14:3,5	
11:25 12:19 15:14   15:24 16:3,4,9,16   17:6,7 29:5,6,10   29:10,11,12,13,19   30:3   adequate 21:16   29:10   adjudicating 3:11   adjudicating 3:13   area 8:10   areas 26:23,25   areas 26:23,25   areas 26:23,25   areas 26:23,25   areas 26:23,25   areas 26:23,25   areas 26:23   29:12,23   29:12,23   29:12,23   29:12,23   29:12,23   29:12,23   29:12,23   29:12,23   29:12,23   29:12,23   29:12,23   20:10   20:4 27:8   askeing 7:3 16:15   21:5,6 23:14 29:8   22:12,6 23:14 29:8   22:12,6 23:14 29:8   22:12,6 23:14 29:8   22:12,6 23:14 29:8   22:12,6 23:14 29:8   22:12,6 23:14 29:8   22:12,6 23:14 29:8   22:12,6 23:14 29:8   22:12,6 23:14 29:8   23:13,16,20,24   24:22 02:10   24:9 27:24   creating 22:12   credit 9:4,11 20:1   20:3   currently 19:22   competition's 17:6   completing 12:15   completing 12:			l .		crap 16:18 17:11
15:24 16:3,4,9,16 17:6,7 29:5,6,10 29:10,11,12,13,19 30:3 adequate 21:16 29:10 adjudicating 3:11 adjudicative 3:14 after 17:17 18:2 19:10 20:4 27:8 again 7:6,22 8:18 9:7 10:15 13:18 13:19 against 30:2 agency 11:21 17:22 20:7 ago 25:23 agree 21:21,24,25 22:21 24:2 27:21 agreed 10:11 angued 26:15 asking 7:3 16:15 21:5,6 23:14 29:8 against 30:2 agency 11:21 17:22 ago 25:23 agree 21:21,24,25 22:21 24:2 27:21 agreed 10:11 angued 26:15 answing 7:3 16:15 10:8 assertisk 15:19 asterisk 15:19 attempts 17:1 competition 16:24 30:2 competition 16:24 30:2 competition's 17:6 completed 8:16 comclede 3:1:1 17:7 completed 8:16 completed 8:16 comclede 8:2:11:s 24:10 20:3 22:12 22:13 25:6 called 9:25 10:13 25:6 called 9:25 10:13 25:6 called 9:25 10:13 25:6 calling 15:17 calls 11:10 coduct 6:3 2:4 3:1,46,10 4:5 8:420 5:6 12:4 16:8 16:11,14,20 17:25 18:6,8,11 19:14 20:16,222:11 24:22 27:22 22:11,15,221 23:1 16:11 10:8 asker 3:1 2:18 concluded 30:1 11 conduct 6:3 22:4 3:1,46,10 4:5 18:420 5:6 12:4 16:8 16:11					
17:67 29:5,6,10   29:10,11,12,13,19   30:3   adequate 21:16   29:10   April 10:13   area 8:10   area 8:10   area 8:10   area 26:23.25   argued 26:11   arguing 26:7   around 13:2 15:10   asked 9:16 17:3   asking 7:3 16:15   21:5,6 23:14 29:8   asserted 29:9   against 30:2   agency 11:21 17:22   20:7   ago 25:23   agree 21:21,24,25   agree 21:21,24,25   agree 21:21,24,25   agree 21:21 24:2 27:21   agreed 10:11   ahead 3:5   Alder 2:10   allegations 12:20   allegations 12:20   allong 5:19   already 7:9 14:22   already 7:9 14:22   area 8:10   approximate 6:11   approximate 6:11   approximate 6:11   approximate 6:11   approximate 8:18   Box 29:25   Braxton 2:4   break 14:24   brings 12:3,7   brought 20:11   buil 17:11   business 19:23   completed 8:16   completing 12:15   compliance 4:24 6:6   comply 10:19 27:22   computer 25:25   concerned 6:1   concerns 4:2 11:8   conclude 28:20 30:9   concluded 30:11   conduct 6:3   concluded 30:11   conduct 6:					
29:10,11,12,13,19 30:3  adequate 21:16 29:10  adjudicating 3:11 adjudicative 3:14 adjudicative 3:14 aginer 7:17 18:2 19:10 20:4 27:8 again 7:6,22 8:18 9:7 10:15 13:18 13:19 against 30:2 agency 11:21 17:22 20:7 ago 25:23 agree 21:21,24,25 22:21 24:2 27:21 ahead 3:5  22:21 24:2 27:21 ahead 3:5  Alder 2:10 allegations 12:20 alone 21:10 along 5:19 already 7:9 14:22 approximately 8:8 8:11 approximately 8:8 8:11 April 10:13 area 8:10 break 14:24 brings 12:3,7 brought 20:11 bull 17:11 business 19:22 29:12,23  Completing 12:15 completing 12:15 compliance 4:24 6:6 comply 10:19 27:22 computer 25:25 concerned 6:1 concerns 4:2 11:8 concluded 30:11 conduct 6:3 conducting 3:8 concluded 30:11 conduct 6:3 conducting 3:8 concluded 30:11 conduct 6:3 conducting 3:8 conference 1:5,8 2:4 3:1,4,6,10 4:5 4:20 5:6 12:4 16:8 29:12 29:12,23  creating 22:12 credit 19:4,11 20:1 20:3 current 29:11,12 currently 19:22  D D D 2:6 Dan 2:13 4:4,23 5:18 data 24:23 data 24:23 data 24:23 data 24:23 conducting 3:8 concluded 30:11 conduct 6:3 conducting 3:8 conducting 3:1 conductio:3 conducting 3:8 conductin					
30:3 adequate 21:16 29:10 adjudicating 3:11 adjudicative 3:14 adjudicative 3:14 adjudicative 3:14 adjudicative 3:14 agreed 26:11 argued 26:11 arguing 26:7 around 13:2 15:10 asked 9:16 17:3 asking 7:3 16:15 13:19 against 30:2 agency 11:21 17:22 20:7 ago 25:23 agree 21:21,24,25 22:21 24:2 27:21 agreed 10:11 ahead 3:5 21:59 allegations 12:20 allong 5:19 already 7:9 14:22 already 7:9 14:22 already 7:9 14:22  area 8:10 April 10:13 area 8:10 break 14:24 brings 12:3,7 brought 20:11 bull 17:11 business 19:22 29:12,23  completed 8:16 complety 10:19 27:22 computer 25:25 concerned 6:1 concerns 4:2 11:8 concluded 30:11 conduct 6:3 conducting 3:8 called 9:25 10:13 25:6 calling 15:17 came 8:21 15:5,13 15:16,16 17:5 card 17:20 case 28:2 cash 19:24,25 20:16,23 21:1,5 21:13,20 22:5,8 dealt 19:4  17:20 18:23 current 29:11,12 current 29:13:12 conclude 30:11 conduct 6:3 conclude 30:11 conduct 6:3 conducting 3:8 conclude 30:11 conduct 6:3 conclude 30:11 conduct 6:3					
adequate 21:16 29:10 adjudicating 3:11 adjudicative 3:14 after 17:17 18:2 19:10 20:4 27:8 again 7:6,22 8:18 9:7 10:15 13:18 13:19 against 30:2 agency 11:21 17:22 20:7 ago 25:23 agree 21:21,24,25 22:21 24:2 27:21 agreed 10:11 ahead 3:5 April 10:13 area 8:10 argued 26:11 bull 17:11 business 19:22 completed 8:16 comply 10:19 27:22 computer 25:25 concerned 6:1 conclude 30:11 conduct 6:3 colulated 8:8 conclude 28:20 30:9 conclude 30:11 conduct 6:3 colulated 8:8 conclude 28:20 30:9 conclude 30:11 conduct 6:3 colulated 8:8 conclude 28:20 30:9 conclude 30:11 conduct 6:3 colulated 8:8 conclude 30:11 conduct 6:3 colulated 8:3 colulated 8:3 colulated 8:5 conclude 30:11 conduct 6:3 colulated 8:3 colulated 8:3 colulated 8:5 colulated 8:5 conclude 30:11 colulated 8:3 colulated 8:5 colulated 8:5 colulated 8:5 colulated 8:5 colulated 9:25 10:13 date 1:9 7:23 11:18 date 1:9 7		,			
According 3   1		I * * *			
adjudicating 3:11 adjudicative 3:14 after 17:17 18:2 19:10 20:4 27:8 again 7:6,22 8:18 9:7 10:15 13:18 13:19 asked 9:16 17:3 asking 7:3 16:15 21:5,6 23:14 29:8 against 30:2 20:7 ago 25:23 agree 21:21,24,25 22:21 24:2 27:21 agreed 10:11 agreed 10:11 agreed 10:11 agreed 10:11 agreed 10:11 agreed 10:12 allegations 12:20 allegations 12:20 allegations 12:20 allegations 12:10 allegations 12:10 allegations 12:20					
adjudicative 3:14 after 17:17 18:2 19:10 20:4 27:8 again 7:6,22 8:18 9:7 10:15 13:18 13:19 agency 11:21 17:22 20:7 ago 25:23 agree 21:21,24,25 22:21 24:2 27:21 agreed 10:11 ahead 3:5 Alder 2:10 allegations 12:20 along 5:19 already 7:9 14:22 argued 26:11 arguing 26:7 around 13:2 15:10 asked 9:16 17:3 asking 7:3 16:15 21:5,6 23:14 29:8 asserted 29:9 assets 19:20 Calculated 8:8 call 9:10,19 10:4 17:20 18:23 called 9:25 10:13 25:6 calling 15:17 calls 11:10 came 8:21 15:5,13 15:16,16 17:5 card 17:20 case 28:2 cash 19:24,25 computer 25:25 concerned 6:1 conclude 28:20 30:9 concluded 30:11 conduct 6:3 conduct 6:3 conclude 30:1 conduct 6:3 conduct 6:3 conclude 30:1 conduct 6:3 conclude 30:1 conduct 6:3 conduct 6:3 conclude 30:1 conduct 6:3 conclude 30:1 conduct 6:3 conduct 6:3 conclude 30:1 conduct 6:3 conclude 30:1 conduct 6:3 conduct 6:3 conclude 30:1 conduct 6:3 conclude 30:1 conduct 6:3 conduct 6:3 conclude 28:20 30:9 date 1:9 7:23 11:18 data 24:23 date 1:9 7:23 11:18 19:15,16,17 2:5 days 6:18,20 7:10 9:8.14 11:17 24:20 5:6 12:4 16:8 days 6:18,20 7:10 9:8.14 11:17 22:4 3:1,4,6,10 4:5 days 6:18,20 7:10 9:8.14 11:17 22:4 3:1,4,6,10 4:5 days 6:18,20 7:10 9:8.14 11:17 24:20 5:6 12:4 16:8 days 6:18,20 7:10 9:8.14 11:17 24:20 5:6 12:4 16:8 days 6:18,20 7:10 9:8.14 11:10			_		
after 17:17 18:2 19:10 20:4 27:8 again 7:6,22 8:18 9:7 10:15 13:18 13:19 against 30:2 agency 11:21 17:22 20:7 ago 25:23 agree 21:21,24,25 22:21 24:2 27:21 agreed 10:11 ahead 3:5 Alder 2:10 allegations 12:20 allegations 12:20 allegations 12:20 allegations 12:20 allegations 5:19 already 7:9 14:22 against 30:2 against 30:3 bacal 19:10,19 10:4 bacal 9:25 10:13 bacal 9:25 10:13 bacal 9:15:17 calls 11:10 came 8:21 15:5,13 15:16.16 17:5 bacal 17:20 case 28:2 card 17:20 case 28:2 card 17:20 case 28:2 card 17:20 cas		· ·			
19:10 20:4 27:8   again 7:6,22 8:18   9:7 10:15 13:18   13:19   asked 9:16 17:3   asking 7:3 16:15   21:5,6 23:14 29:8   asserted 29:9   assets 19:20   ASSISTANT 2:9   associate 9:16 10:1   10:8   asterisk 15:19   attempts 17:15   ahead 3:5   Alder 2:10   allegations 12:20   allegations 12:20   allegations 12:20   allegaty 7:9 14:22   already 7:9 14:22   already 7:9 14:22   already 7:9 14:22   already 7:9 14:22   around 13:2 15:10   asked 9:16 10:3   asked 9:16 17:3   asked 9:16 10:1   calculated 8:8   conclude 28:20 30:9   concluded 30:11   conduct 6:3   conducting 3:8   conference 1:5,8   25:24   days 6:18,20 7:10   9:8.14 11:17   28:25   days 6:18,20 7:10   9:8.14 11:17   28:25   days 6:18,20 7:10   9:8.14 11:17   28:25   deadline 7:11 9:15   11:1   dealing 4:9,10   deals 30:3   dealt 19:4   dealing 4:9,10   dealing 4:9,10   dealing 4:9,10   deals 30:3   dealt 19:4   dealing 4:9,10   dealing 4:					D
again 7:6,22 8:18 9:7 10:15 13:18 13:19 against 30:2 agency 11:21 17:22 20:7 ago 25:23 agree 21:21,24,25 22:21 24:2 27:21 agreed 10:11 ahead 3:5 Alder 2:10 allegations 12:20 allegations 12:20 allegations 12:20 allegations 12:20 allegaty 7:9 14:22 against 7:6,22 8:18 asked 9:16 17:3 asking 7:3 16:15 21:5,6 23:14 29:8 call 9:10,19 10:4 17:20 18:23 called 9:25 10:13 25:6 calling 15:17 calls 11:10 came 8:21 15:5,13 15:16,16 17:5 card 17:20 case 28:2 cash 19:24,25 21:13,20 22:5,8 althority 3:9,21 authorized 30:4 available 4:14 available 4:14 available 4:14 available 4:14 available 4:14 available 4:14  asked 9:16 17:3 asking 7:3 16:15 calculated 8:8 call 9:10,19 10:4 17:20 18:23 concurred 6:1 concerns 4:2 11:8 conclude 28:20 30:9 concluded 30:11 conduct 6:3 25:24 conducting 3:8 conference 1:5,8 24:3:1,4,6,10 4:5 4:20 5:6 12:4 16:8 16:11,14,20 17:25 18:6,8,11 19:14 20:16,23 21:1,5 28:25 deadline 7:11 9:15 11:1 dealing 4:9,10 deals 30:3 dealt 19:4 December 7:6,21 11:9			29:12,23		D 2:6
again 7.0,22 8.16 9:7 10:15 13:18 13:19 against 30:2 agency 11:21 17:22 20:7 ago 25:23 agree 21:21,24,25 22:21 24:2 27:21 agreed 10:11 ahead 3:5 Alder 2:10 allegations 12:20 allegations 12:20 allegations 12:20 allegations 12:20 allegations 12:20 allegaty 7:9 14:22 against 30:2 asking 7:3 16:15 21:5,6 23:14 29:8 call 9:10,19 10:4 17:20 18:23 called 9:25 10:13 25:6 calling 15:17 calls 11:10 came 8:21 15:5,13 15:16,16 17:5 card 17:20 case 28:2 cash 19:24,25 22:21 24:2 27:21 athority 3:9,21 authorized 30:4 available 4:14 available 4:14 p:10,19 10:4 17:20 18:23 conclude 28:20 30:9 conclude 30:11 conduct 6:3 25:24 conducting 3:8 conference 1:5,8 24:20 5:6 12:4 16:8 16:11,14,20 17:25 18:6,8,11 19:14 20:16,23 21:1,5 28:25 deadline 7:11 9:15 11:1 dealing 4:9,10 deals 30:3 dealt 19:4 December 7:6,21 11:9		l .			
13:19 against 30:2 agency 11:21 17:22 20:7 ago 25:23 agree 21:21,24,25 22:21 24:2 27:21 agreed 10:11 ahead 3:5 Alder 2:10 allegations 12:20 already 7:9 14:22 agreed 10:11 agreed 10:12 allegations 12:20 allegations 12:20 allegations 12:20 allegations 12:20 already 7:9 14:22 agreed 10:14 agreed 10:15 agreed 10:16 agreed 10:17 allegations 12:20 allegation		1			
against 30:2 agency 11:21 17:22 20:7 ago 25:23 agree 21:21,24,25 22:21 24:2 27:21 agreed 10:11 ahead 3:5 Alder 2:10 allegations 12:20 allegations 12:20 allegations 12:20 allegaty 7:9 14:22 agreed 7:9 14:22 agreed 10:14 and asserted 29:9 asserted 29:0 18:23 concluded 30:11 conduct 6:3 25:6 calling 15:17 4:20 18:23 4:20 5:6 12:4 16:8 16:11,14,20 17:25 18:6,8,11 19:14 20:16,23 21:1,5 28:25 deadline 7:11 9:15 11:1 dealing 4:9,10 deal					
agency 11:21 17:22 20:7 age 25:23 agree 21:21,24,25 22:21 24:2 27:21 agreed 10:11 ahead 3:5 Alder 2:10 allegations 12:20 allegations 12:20 allegations 12:20 allegations 12:10 allegations 12:20 alled 9:25 10:13 25:6 called 9:25 10:13 conduct 6:3 conducting 3:8 conduct 6:3 conducting 3:8 conducting 3:8 conduct 6:3 conduct 6:3 conduct 6:3 conduct 6:3 conduct 6:3 conduct 6:3 conducting 3:8 conducting 3:9 conducting 3:9 conducting 3:9 conducting 3:9 conducting 3:9 conducting 3:					
20:7 ago 25:23 agree 21:21,24,25 22:21 24:2 27:21 agreed 10:11 ahead 3:5 Alder 2:10 allegations 12:20 allong 5:19 already 7:9 14:22  ASSISTANT 2:9 associate 9:16 10:1 10:8 associate 9:16 10:1 10:8 asterisk 15:19 attempts 17:15 attorney 2:9 13:12 cand 17:20 case 28:2 cash 19:24,25 c					
ago 25:23 agree 21:21,24,25 22:21 24:2 27:21 agreed 10:11 ahead 3:5 Alder 2:10 allegations 12:20 allong 5:19 already 7:9 14:22 agreed 7:21 14:22 agreed 21:21,24,25 agreed 10:1 attorney 2:9 13:12 agreed 10:1 attorney 2:9 13:12 agreed 10:1 attorney 2:9 13:12 agreed 10:10 attorney 2:9 13:12 agreed 10:10 attorney 2:9 13:12 13:19 15:9 card 17:20 case 28:2 cash 19:24,25 Center 17:22 19:8 certified 7:24 8:19 already 7:9 14:22 already 7:9 14:22 agreed 10:1 attorney 2:9 13:12 agreed 10:1 attorney 2:9 13:12 came 8:21 15:5,13 15:16,16 17:5 card 17:20 case 28:2 cash 19:24,25 Center 17:22 19:8 certified 7:24 8:19 9:13,19 10:22 conference 1:5,8 2:4 3:1,4,6,10 4:5 4:20 5:6 12:4 16:8 16:11,14,20 17:25 deadline 7:11 9:15 11:1 dealing 4:9,10 deals 30:3 dealt 19:4 December 7:6,21 11:9					
agree 21:21,24,25 22:21 24:2 27:21 agreed 10:11 ahead 3:5 Alder 2:10 allegations 12:20 along 5:19 already 7:9 14:22  10:8 asterisk 15:19 attempts 17:15 attorney 2:9 13:12  10:8 asterisk 15:19 attempts 17:15 calls 11:10 came 8:21 15:5,13 15:16,16 17:5 card 17:20 case 28:2 cash 19:24,25 Center 17:22 19:8 certified 7:24 8:19 already 7:9 14:22  2:4 3:1,4,6,10 4:5 4:20 5:6 12:4 16:8 16:11,14,20 17:25 deadline 7:11 9:15 11:1  20:16,23 21:1,5 21:13,20 22:5,8 22:11,15,21 23:1 23:13,16,20,24 24:9 27:2,11,20 25:dealing 7:19:10 28:25 deadline 7:11 9:15 11:1 20:16,23 21:1,5 21:13,20 22:5,8 22:11,15,21 23:1 23:13,16,20,24 24:9 27:2,11,20 25:dealine 7:11 9:15 11:1 28:25 deadline 7:11 9:15 11:1 28:25 deadline 7:11 9:15 11:1 28:25 deadline 7:11 9:15 11:1 20:16,23 21:1,5 21:13,20 22:5,8 22:11,15,21 23:1 23:13,16,20,24 24:9 27:2,11,20 25:dealing 1:17 28:25 28:25 deadline 7:11 9:15 11:1 20:16,23 21:1,5 21:13,20 22:5,8 22:11,15,21 23:1 23:13,16,20,24 24:9 27:2,11,20 25:dealing 1:17 28:25 28:25 28:25 20:16,23 21:1,5 20:16,23 21:1,5 21:13,20 22:5,8 22:11,15,21 23:1 23:13,16,20,24 24:9 27:2,11,20 25:dealine 7:11 9:15 26:dealine 7:11 9:15 27:dealing 1:17 28:25 28:25 29:8.14 11:17 28:25 29:8.14 11:17 28:25 21:13,20 22:5,8 21:13,20 22:5,8 22:11,15,21 23:1 23:13,16,20,24 24:9 27:2,11,20 25:dealine 7:11 9:15 25:dealine 7:11 9:15 26:dealine 7:11 9:15 27:dealine 7:11 9:15 28:25 28:25 29:8.14 11:17 28:25 29:8.14 11:17 28:25 29:8.14 11:17 28:25 29:8.14 11:17 28:25 29:8.14 11:17 28:25 21:13,20 22:5,8 21:13,20 22:5,8 22:11,15,21 23:1 23:13,16,20,24 24:9 27:2,11,20 24:9 27:2,11,20		1			
22:21 24:2 27:21 asterisk 15:19 attempts 17:15 attorney 2:9 13:12 l3:19 15:9 allegations 12:20 along 5:19 already 7:9 14:22 asterisk 15:19 attempts 17:15 attorney 2:9 13:12 l3:19 15:9 card 17:20 case 28:2 l3:13,16,20,24 laready 7:9 14:22 are already 7:9 14:22 asterisk 15:19 attempts 17:15 attorney 2:9 13:12 l3:19 15:9 card 17:20 case 28:2 l3:13,20 22:5,8 l6:11,14,20 17:25 l8:6,8,11 19:14 l20:16,23 21:1,5 l8:6,8,11 19:14 l8:8 l8:8 l8:14 l8:14 l8:8 l8:14			_	N	
agreed 10:11 ahead 3:5 Alder 2:10 Alder 2:10 allegations 12:20 along 5:19 already 7:9 14:22  attempts 17:15 attorney 2:9 13:12 15:16.16 17:5 card 17:20 case 28:2 cash 19:24,25 Center 17:22 19:8 certified 7:24 8:19 p:13,19 10:22  allegations 12:20	agree 21:21,24,25				
allegations 12:20 allegations 12:20 along 5:19 already 7:9 14:22 a			_		
Alder 2:10 Alder 2:10 Allegations 12:20 allegations 12:20 along 5:19 already 7:9 14:22  Algust 6:15 authority 3:9,21 authorized 30:4 available 4:14 availabl	agreed 10:11				
August 6:15 allegations 12:20 alone 21:10 along 5:19 already 7:9 14:22 already 7:9 14:22  August 6:15 authority 3:9,21 authorized 30:4 available 4:14 availa					
alone 21:10 authority 3:9,21 authority 3:9,21 authorized 30:4 available 4:14 avai	Alder 2:10				
along 5:19 authorized 30:4 available 4:14 available 4:14 p:13,19 10:22 already 7:9 14:22 already 7:9 14:22 already 7:9 14:22 are already 7:9 14:22 already 7:9 14:22 are already					
already 7:9 14:22 available 4:14 9:13,19 10:22 24:9 27:2,11,20 11:9	alone 21:10				
aiready /:9 14:22 9:15,19 10:22 9:15,19 10:22	along 5:19				
15:1,3 22:24,25   a.m 1:10 30:11   23:21,21   28:1,5,11,15,19   deficiencies 10:10	already 7:9 14:22				
	15:1,3 22:24,25	a.m 1:10 30:11	23:21,21	28:1,5,11,15,19	deficiencies 10:10



# Thacker + Co LLC

<u> </u>				
10:25 13:16 14:6	doubt 13:21	26:14	go 3:4 13:7 17:14	inactive 11:6
14:14	down 15:2 17:8,12	facts 20:6	22:18 23:18,19	include 4:12
deficiency 6:25 8:16	19:9,18 22:18	fall 18:18,19	25:13	including 3:20
defined 3:10,12	27:19	far 5:25 17:9 25:18	goes 16:1	increased 23:25
definition 3:13,23	downfall 19:24	fax 7:13	going 3:13 4:16,24	indicated 5:5 7:19
3:24	drama 14:25	faxed 9:23 10:22	13:12,13,15 15:9	9:20 10:16 11:12
delivered 8:23	drawn 11:1	February 7:11,13	16:21,25 17:14,14	11:13 12:6,10
11:22	dreaming 13:4	9:25 10:2,3	27:25 28:22,23	indicates 25:4
denied 7:8 19:1	drug 21:9	feel 21:18 27:18	gone 5:16 15:2 20:9	Industrial 20:2 30:4
20:2	due 10:18	feels 12:11	GPS 8:7 24:23	informal 1:5 3:1,6
deny 3:21	during 8:6	feet 21:10	GPSing 27:6	3:11 4:5,20 5:5
Department 1:7	duties 3:19	felt 7:8	grant 3:21	30:9
determines 3:18		few 5:23 9:22 24:16	granted 6:20 9:8,11	information 5:9
develop 4:22	E	27:8	gravel 25:7	6:12 9:8 10:17
difference 23:8	early 10:5 18:13	file 18:15 20:15	great 29:1,21	12:14 16:25 17:2
different 14:10	East 17:22	filed 6:17 13:23	ground 8:9	17:17 18:4
24:10	effectiveness 15:22	14:16 17:24 18:17	guess 5:21 12:8	inspected 6:4
difficulty 10:17	eight 14:2,7 27:9,19	filing 18:3	guys 15:17	inspection 6:9 8:6
directive 9:13 10:21	either 12:1 29:24,25	find 14:12 15:20		11:5,7
director 9:16 10:2,8	emblem 25:2	20:5 27:15	Н	inspections 15:2
12:2	Emery 20:1 30:4	finding 28:24	hand 11:22	Insurance 17:22
discuss 5:7 9:4,7	end 9:1	findings 28:24	handed 28:4	20:9
11:7,11	enough 14:1	five 6:6,10 7:16	hands 13:2	intended 12:25
discussing 5:24	entertain 20:22	24:4 27:17,18	happening 4:18	intention 6:2,23
distort 15:10	entries 5:23	flow 19:24,25	having 10:17 11:12	interests 3:19
distorting 28:9	enumerated 4:11	focus 13:9,13,13	12:5 13:25 21:11	involved 20:20
disturbance 6:7,11	erroneous 15:12	follow 5:19	headed 12:23	issue 12:19 14:11
6:14 7:20 8:9	error 12:11	formal 7:22 10:11	headway 20:5	17:12 20:21
21:15,21 22:22	Esq 2:10	found 6:5,9	hear 5:1 18:16	issued 10:20
23:10,25 24:4,7	essence 3:23	frame 9:4	heard 18:18	issues 13:18
24:10 25:6 26:16	established 7:11	from 4:17 5:1 7:14	hearing 12:4 23:7	Item 17:13
27:9 28:21,21	8:20 11:1	9:3 12:8 13:3,4,22	hedberg 2:6 5:3,4	Items 17:18
disturbances 27:23	estimated 6:9	14:23 15:16 18:16	12:5 16:4 29:17	recins 17.10
disturbed 24:13	estimates 27:17	18:18 23:25 24:21	hell 15:15	J
26:24	etc 11:15	24:22	her 15:21	J 1:11
1	evasion 4:9	front 28:6	hey 16:22,22	January 1:9 3:2
division 1:1 2:3	evasive 12:21	full 13:1 16:18	Hill 3:7 5:25 6:3	8:18 9:12,18
3:16,16 4:2,8,15 4:22 6:1,17,20,24	evasive 12:21 evasiveness 20:20	furnished 23:19	him 8:1,24,25 9:23	11:20,23 27:8
7:8,21,23 8:15	ever 27:14 30:4,5	further 15:15	11:16	Joell 15:17,20
	every 9:22 11:15	iuituti 1J.1J	hire 13:12,19 15:8	July 6:1,4,8 9:6
9:13 10:12,13,20	exceeded 6:10	G	history 4:21 5:14,24	11:9 17:16 18:5
10:21 11:24 12:2		games 28:10	17:14	18:13
13:10,23 23:9	27:16 Examp 17:25 18:8		[	June 6:24 9:1,2
Division's 5:9	Excuse 17:25 18:8	gas 1:1 2:3 3:17,17	holding 17:11	
document 28:3,17	expressed 22:2	gave 4:4 8:24,25	home 29:19	11:3,5 17:16 18:4 18:4,4,13
documents 18:15,17	extended 9:14,15	11:25 16:5 20:7,7 GENERAL 2:9	Ī	just 3:14 6:6 13:5
DOGM 12:22 15:22	extension 6:19,20	generated 25:25	icon 25:3	15:11 16:14 25:14
16:2	7:7 9:10	generated 23:23 gentleman 17:23	identifiable 3:20	28:4
doing 3:15 4:6	F	give 12:8 17:7 19:25	identified 26:15	20.7
15:11 16:7 17:4			identifies 27:9	K
18:21,21 19:22	F 2:10	giving 12:18	immediately 17:18	keep 16:21 20:12,13
done 4:19 13:5 15:2	facilitate 4:24	glad 20:21	18:2,3	26:2
23:21 26:17	fact 16:2 18:7 24:14	global 8:7	10.4,3	20.2
				, ,
3884 / 9 May 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1		ACC - NO. COMMON SECTION OF THE COMMON AND ACCOUNT.	CHURCH THE TOTAL TANK	LEV CULL , CC ON THE WAS THE FYRINGEN P. P.



## Thacker + Co llc

	<del>,</del>	<del></del>	<del></del>	
Kerry 1:11	25:2,3	mining 1:1 2:3 3:17	<b>OFFICER</b> 3:4 16:8	Orem 19:8,9 20:9
key 5:13 19:3,7,8	live 9:21	3:17 6:2,22 7:17	16:11,14,20 17:25	original 6:22 13:11
kind 3:13,14 5:15	lived 21:19	8:1,4 24:3 25:6	18:6,8,11 19:14	20:14
12:7	loan 19:5	moment 4:20	20:16,23 21:1,5	other 3:19 4:14
know 12:22 13:3	loggerheads 27:24	months 14:3 27:8	21:13,20 22:5,8	12:14 19:21 24:2
14:1,1,24 15:3,6,8	long 21:2	more 3:20 10:19	22:11,15,21 23:1	ought 15:23 28:7
15:21 16:12.19	look 15:7,11 25:13	14:6 16:1 21:12	23:7,13,16,20,24	out 13:20 14:12
17:10 18:25 19:22	27:3,5	morning 5:4,11	24:9 27:2,11,20	15:20 20:5 23:23
20:6,18 22:3 25:8	looking 3:25	moved 26:8	28:5,11,15,19	27:17
25:24	looks 17:10	much 14:9 19:22	29:4,8,15,22 30:7	outlined 11:23
kunzler 2:7 5:12,22	lot 14:12	myself 21:12	offices 15:23	outstanding 5:10
16:16,19 24:19,22	Loudermouth	M/049/021 3:8	Oh 15:4	10:10 13:16 14:5
25:4,10,12,18,22	24:13		oil 1:1 2:3 3:16,17	14:13
26:2,6,11,14,22	love 15:6,9	N	okay 5:4,22 12:17	over 4:8 5:2 7:4,9
20.2,0,11,11,22	Lowell 2:4 5:5	name 17:23 19:5	13:5,11,20 15:12	9:13 10:9 13:7,18
L	luxury 13:24	20:8	15:24 16:20 17:7	17:14
Lake 1:8	Lynn 2:7 5:12 12:6	Nathan 19:6	17:12,15,19,23	overdue 10:15
land 21:25	22:3 24:21	Natural 1:7	18:11,16,21,22	overlaid 24:23
landowner 8:13	22.3 27.21	necessarily 26:18	19:1,13,17 20:1	own 27:16
language 13:16	M	need 4:16 12:12	20:16 23:1,19	UWII 27.10
large 6:16,22 7:17	made 12:12 17:21	13:21 20:14	24:16,16,20,25	P
8:4 13:11 14:3	18:13 19:1,3	needed 10:18,18	25:11 26:9,13	P 2:4
last 25:20 29:17	20:10 25:16	needing 26:16,16	27:1,20	page 27:3
late 18:12,12 24:14	mail 9:23 10:22	never 7:24 12:25	old 7:5 26:16	page 27.3
later 19:3	make 9:4,4 15:7,11	18:17 26:11	one 3:19 4:7 5:12	Park 3:7 5:25
law 21:14,17,19	15:11 17:20 20:5	next 6:4	13:21 17:12 21:9	Parkway 19:8
26:22 30:2	20:12 22:6,13	nine 6:14	23:2 27:15 29:24	Parmley 20:8
laws 10:19	26:10 28:23	nine-tenths 8:11	29:25	part 19:21 21:17
least 4:17 5:13	manager 19:7	nobody 30:3,3	one-man 13:1,5	22:6,13
legal 3:18,19	map 7:24 24:15,18	noncompliance	only 9:22 14:7,22	partner 16:7
less 6:6 24:4	24:22,24 25:1,5,9	10:21 11:25	30:2	partner 10.7
let 16:22 24:14,15	25:16,18,24,25	North 1:7	on-site 11:8	party 16:23
24:16 28:17	26:15	note 13:23	operate 14:22	party 10.23
letter 6:16 7:22,25	maps 23:3.6,18,19	notes 22:4	operating 19:23	past 9.14 paying 15:3
8:19,22,25 9:3,19	23:21	notice 6:2,17,22,25	operating 19:23	Payson 29:20
	· ·	8:4 10:21		. •
9:24 11:2,4,21,23 15:14,18 17:9	March 8:3,16 10:5 10:6,7,12	November 6:21	7:18 8:2,4 14:20 14:21 24:3	penalties 4:13 people 13:2 17:20
			l .	
19:4,11 20:1,2,11 28:22 29:18	market 14:22	13:9,13,22 14:10	operations 6:3	permit 3:22 21:16 23:4 24:2
letters 15:7	Mary 2:5 materials 7:23	14:17,19 number 17:13 21:9	operator 5:6 6:13	permits 27:12
let's 3:4 15:4 16:21		21:10 22:23		permits 27:12 permitted 14:2
16:21 27:2,2	may 4:10 8:21 10:20 12:14 15:5	nuts 17:8	6:16 7:3,6,14 8:21	permitting 3:25
28:10		Huts 17.0	9:3,7,25 10:23	
	Maybe 28:7	0	11:6,11 15:5,13	4:19 5:10,14,16
levelling 4:13	meeting 9:3,6,17		24:11	7:17,23 12:16
license 3:22	10:1,5	obtaining 11:13	operator's 10:9	personal 11:10
like 4:21,25 5:11,21	members 5:12	occasions 22:3	opportunity 5:7	persons 3:20
11:15 15:2,11	met 10:7	Occurred 6:9	12:9,18	phone 9:10,18 10:4
17:10 23:22	might 4:4 24:17	October 6:19 7:2	option 12:1	11:10
lined 11:16	mind 27:4	9:11,15	options 4:4,14	pick 9:23
listen 12:13	mine 3:7 5:25 6:17	off 24:3	order 14:20,21,25	pit 25:7
literal 3:23	13:11 14:4 25:22	office 8:22 11:22	ordering 10:23	place 4:1
little 13:7 17:5 25:2	mineral 10:8	15:6,13 19:8	orders 4:13	playing 28:10
	41 A 7 6 7			



# Thacker + Co llc

please 18:9 29:15	24:17	REPORTED 1:11	saying 15:17 28:20	specifically 4:12
pockets 13:3	putting 14:12 15:19	reports 7:18 27:15	says 9:21 11:16	21:6
point 12:8 26:9	P.O 29:25	request 7:3 8:12	26:23	spur 4:20
portion 7:15 26:14	1.0 27.23	requested 3:6 4:5	schedule 9:17	square 25:2
position 12:8	0	6:19 7:7	scheduled 10:1,6	staff 5:12 10:8 13:2
position 12.8	question 16:15	requesting 6:16,25	11:7	stage 5:15
post 11:2	questions 24:16	7:22 8:19 9:3,10	second 8:16	stalling 17:11
posted 6:13	quit 18:20,21 28:10	10:4,14	security 19:20,21	stamped 14:9
posting 10:24 27:22	quite 24:6	requests 5:9	see 15:4 19:17	start 13:8 25:21
powell 2:13 10:8,10		require 8:10	24:15 25:13 28:3	started 3:5 17:18
10:14,16 11:21	R	requirements 5:11	28:5	23:23 24:3,7
12:1,9,17 15:15	raised 4:2	21:11	seeing 27:4,6	25:17,22
16:6,10,12,18,22	rather 7:16	requiring 10:17	seemed 11:15	state 1:2 12:22
18:2,7,10,12	read 3:13 5:13 12:5	reschedule 10:4	send 15:23	13:25 14:1 22:1
19:16 20:18,25	28:7 29:15	resolution 5:10	sending 29:7,23	22:19
21:3,7,18,24 22:6	reasons 21:8	Resources 1:7 20:2	30:1	stated 7:14
22:10,13,17,24	rebut 12:9,20	30:4	sent 6:15,24 7:2,21	statement 20:24,25
23:5,11,15,18,23	receipt 11:1	respond 7:3 9:1	8:18,23 9:12,20	statements 12:10
24:5,12,20,25	receive 15:18	responding 5:8	11:20 15:14 16:2	States 25:1
25:8,11,14,21	received 6:2,21 7:13	response 7:1,12	16:9,23,25 17:2,9	state's 14:2 21:9
26:1,4,9,13,19	7:24 8:3 9:2,9,18	8:19,24 10:11,15	29:18,18	stating 7:25
27:1,3,10,13 28:3	9:20 10:3 11:3,18	11:3 14:3,5,8	September 8:5,15	status 5:7 10:14
28:7,14,17 29:1,6	13:10 14:10	responses 10:9	9:9 11:4 27:6	statute 3:24
29:13,21,24	reclaim 7:15	responsibility 26:24	set 3:14 5:15 12:21	statutes 13:25 14:1
prepared 12:19	reclaimed 8:1 27:17	reuse 26:23	22:1	steps 5:16
PRESENT 2:12	reclaiming 10:25	reusing 26:18	seven 6:11	Steven 2:10 15:14
presented 21:22	27:23	review 6:25 7:4	several 11:10,14	still 11:18 20:19,19
previously 26:23	reclamation 6:13	8:16 9:4,7 11:4	18:15 22:3	stuff 19:10
Price 9:21,22 29:25	8:10 10:24 11:11	28:22	Sheriff's 11:22	submission 7:22
prior 25:17 26:17	11:19 18:22,22	reviewed 19:10	show 11:7	submissions 9:5
probably 25:19	22:2,18 23:9	reviews 8:20	shown 21:21	submit 7:7 9:8
procedures 4:9,12	26:16,25	revised 8:4	shows 26:15	submittal 8:17
11:24	recognize 4:16	revoke 3:21	since 9:14	submitted 13:14
proceeding 3:12,14	record 5:13 12:6	right 3:15 4:6,11	sir 29:14	17:17
3:18 7:17	22:7,14 28:9	15:23 19:13 24:12	site 6:5,5 8:6 11:5,6	submitting 7:16
PROCEEDINGS	29:11	27:24 28:6,21	situation 9:17	10:24 27:7
3:3	records 12:10 20:13	29:11	six 14:2	subsequently 7:8
process 5:16 12:16	29:23	rights 3:19 13:4	slightly 6:6	10:5
18:14 20:19	refer 3:7 14:13	Rob 17:24 Room 1:8	small 6:2 8:1,10 24:3 25:22	substantial 23:8 sued 17:1
processor 19:5	regard 12:20	RPR 1:11	some 4:2,4 5:13	sued 17:1 sufficient 7:25
project 6:3	regards 9:19 15:5 regraded 8:14	running 16:6	11:8 12:12 20:5,6	suggested 28:23
proposed 11:20	regulations 4:25	running 10.0	25:5	Summarizing 5:22
protract 28:1	12:21	S	someone 13:4 16:2	supplied 23:6
protracted 4:18	reimpacting 26:18	s 22:19	22:18	supposed 12:20
provide 5:6 10:11	reimpacting 20.16	Salt 1:8	something 4:23	13:15 15:18 23:3
16:9,10 23:3 provided 5:18 6:12	relationship 19:7	same 13:18 14:18	16:23 26:7	surety 6:13 10:24
16:17	remain 8:12	sat 19:9,18	sometime 18:19	11:2,11,13,14,19
Provo 17:22	remail 6.12 remedy 9:17	sat 19.9,16 satellite 8:7	Sorensen 1:11	12:15 18:22
purpose 5:5	remember 17:1,5	satisfaction 14:9	South 29:19	surface 22:22
push 14:11 20:21	remnants 26:20,20	satisfied 17:17	speak 28:18	survey 8:6
put 14:5 15:6 24:17	report 27:8	satisfy 17:15	spec 22:19	surveyor 23:21
pat 14.5 15.0 24.1/	10p01127.0		opec and	32.70,0.23.21
				I



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Utah's Leader in Litigation Support

Sman 2.14	25.12.17		waam 6.4 7.10 10.4 0	
Susan 2:14	25:12,17	<u> </u>	year 6:4 7:18 18:6,9	3
suspend 3:21 14:23 15:1	timeliness 4:3 Title 3:9	waiting 29:1	years 7:4,9 14:7 25:20,23	3 17:13
		Walker 19:6	25:20,25	3rd 8:3,17 10:13
suspended 15:1	today 4:16 5:17	walking 13:2	1	30 6:20 28:25
suspense 14:24	12:3,7,19	want 13:7,8,9 14:11		<b>30th</b> 8:15 9:6 11:4
suspension 10:23	together 15:7 24:17	17:19,19 18:23	1 9:11 17:18	<b>30-day</b> 8:20 10:25
14:20,21	24:18	20:12,14,20,21	1st 9:15	31st 9:18
system 8:7	told 15:20,21 20:6	28:1,9,12	10:25 1:10	
Т	tone 3:15	wasn't 14:9,23,25	100 9:14	4
	top 24:24	way 23:23	11 25:23	4th 7:6
take 13:4	topographical	Wayne 2:6 5:3	11th 9:25 11:3	4.3 8:14
taken 1:7 4:1 21:2	24:24 25:1	29:16	11:10 30:11	<b>40-8</b> 3:9 4:11
21:12 24:8	trouble 12:24	week 11:17	12th 10:6,7	40-8-4 3:12
taking 11:25	troubles 11:12	weeks 9:22 10:19	13 7:19 27:16,17	<b>40-8-9</b> 4:12
talk 4:15	truth 15:16	weight 14:12	14th 6:21 10:20	43,500 19:12
talked 11:15	try 26:2	Weisman 18:16,17	11:23 13:9,14,22	<b>43.5</b> 22:17
talking 11:14 22:22	trying 20:5 26:10	weil 3:4 10:22 11:16	14:11,16,19	<b>45</b> 6:17 9:8
tax 10:19	turn 4:7 5:2,21	12:13,17 15:15	1594 1:7	489 29:25
taxes 10:18	twist 15:10	16:14,20 19:23	17th 9:9	
team 13:1,5	twisting 28:9	21:7,18 22:8	19 27:6	6
technical 10:10,15	two 7:4,9 19:11,19	23:13 25:14 26:1	19th 10:3	<b>62</b> 29:19
13:16 14:6,13	21:8,10 22:19	26:19 28:11	19.7 8:9	
tell 15:21 16:22	27:4,5,5	went 10:9 13:18	1992 6:1	7
21:1 25:14	two-week 9:10	17:23 19:3 20:4,9	1994 6:8,21 13:9,14	7th 8:21 15:5
Temple 1:7	type 25:6	27:18	14:17	70s 24:14
ten 11:17 25:20		were 6:12 11:8	1995 6:24	
term 3:16	U	14:18 18:15 26:23	1998 7:11	8
terms 5:8 12:15	Uh-huh 27:10	West 1:7 29:19	1999 8:3,15 11:4	8th 6:1
22:23 23:9 27:21	unbonded 28:21	we'll 14:11 28:20	27:6	800 29:19
27:25	under 3:8 7:16	we're 3:8,15,25 4:6		84114 1:8
Thank 20:16 26:10	21:14	4:10,15 12:3,13	2	84501 29:25
30:6,7	understand 14:7	17:10,12 22:12.22	<b>2</b> 17:18 27:3	84651 29:20
thanks 12:17 18:11	21:14,17 22:16	26:7 27:6,25	2nd 6:24	
their 13:2,3 18:20	23:2,5	we've 5:16 21:18	20 27:7	9
18:24 19:8 21:10	understanding 4:17	26:11 27:14	20.6 8:8	9th 11:20
They'd 25:6	underwriter 18:20	White 2:14	2001 8:18,21 9:1,2,6	<b>90</b> 7:10
thing 4:7	18:24	willingness 27:22	9:9,11,15 15:5	90-day 7:7
things 15:10,10,10	United 25:1	Wiseman 17:21	27:8	93 6:4
17:11	unreclaimed 8:12	18:13 20:6	<b>2002</b> 9:12 10:2,7,13	94 6:15
think 4:16,21 11:16	28:20	Wiseman's 20:4	10:20 14:19 18:10	97 7:2,6
12:5 13:17,17	until 8:25 15:20	words 24:2 28:8	2003 1:9 3:2	<b>98</b> 7:21
14:14,15,15,17,18	updated 12:14	work 16:7	22 6:4	99 8:5,17
21:7,12 24:7	25:19 26:3	working 17:18 24:1	22nd 8:5 9:12 10:12	
25:15,16,16 27:13	use 13:15 16:24	29:2	27:6	
27:14,15 28:12,19	used 25:19	wouldn't 7:10 27:4	23rd 8:18	•
third 22:19	USGS 24:24	Wright 2:5	24th 6:15	
through 5:17	using 8:6 28:8	wrong 8:23 15:14	25th 10:2	
time 1:10 6:12 7:4	UT 1:8	16:3 30:3	26th 11:5	
8:13,20,25 9:4	utah 1:2 3:9,11 6:13		27th 6:8 7:2,11,13	
10:16 11:15 13:3	9:21 11:22 17:22	Y	<b>28</b> 1:9 3:2	
13:3.18,18,19,19	29:20,25	Yeah 16:6 22:10,13	289 17:22	
18:3 21:12 23:25		23:15 26:19	<b>29th</b> 9:2 27:8	



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